CONFLICT OF FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES



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Dedicated to Late Pt Jawahar Lal Nehru and all other freedom fighters who enabled us to live in a free country

Dr Rajendra Sharma

Preface

The conflict of Fundamental Rights and Directive Principles is almost as old as the Indian Constitution Almost all the major decisions of the courts and important amendments of the constitution are related in one way or the other to this conflict In fact the glimpses of this conflict were seen even during the time when the Constituent Assembly was framing the constitution. In the Constituent Assembly many members emphasised that the Fundamental Rights due to so many limitations have no real value On the other hand many members expressed their disappointment that many important rights of the citizens such as the right of employment right of education and right of maintenance in old age sickness etc have not been included in the justiciable fundamental rights but have been included in the Directive Principles It was pointed out in the Constituent Assembly that the Draft Constitution is almost silent regarding economic side of the problem of the masses ' It is rather anxious to safeguard the sanctity of property, it is rather anxious to safeguard the rights of those who have got some thing and it is silent about those who are dispossesed and have got nothing While there is much about the sanctity of property and the inviolability of prop r y things such as right to work, right to means of livelihood and right to leisure etc have been left out and these things should have been effectively incorporated in the constitution. (Constituent Assembly Debates 6th November 19-8 255 Shri Arun Chand Guha) Similarly Shri T Prakasham expressed regarding the Draft Constitution Instead of having a constitution based on a socialist basis in the manner in which Gandhiji had formulated for thirty long years that socialist basis has all been thrown off and a capitalist basis is being introduced That will be the result of this constitution Today we are in the throes of a famine for food and cloth and I would ask Dr Ambedkar whether this Constitution would solve any of these problems To my mind it is not possible so long as the capitalist system is kept up (C A D 6th Nov 1948 page 258 259) These germs of the conflict seen during the framing of the constitution assumed larger proportions lateron and the controversy regarding relative em-

phasis on the value of Fundamental Rights and Directive Principles have been discussed in various State legislatures Parliament and in the courts of law Fundamental Rights in the Indian Constitution have been made justiciable according to the article 32 and article 226, and the provisions of Part IV under the Title - The Directive Principles of the State Policy, according to the Article 37 have been made non - justiciable Due to this arrangement it is generally presumed that the articles of Part IIIrd enjoy a special privilege and importance As a natural Corollary of this it is also generally assumed the Directive Principles are of inferior status in relation to fundamental rights This view has been generally accepted and has also been propounded, professed and upheld by our courts, but the motives and practical necessity for making one part judicially enforceable and other not so have been missed and ignored When the Indian Constitution became operative many important fundamental rights of the citizens such as those of employment, education and humane conditions of the work etc could not be provided in the chapter *of Fundamental Rights because the financial and other resources* of the state were not adequate and hence they were assigned to the part fourth of the constitution the Directive Principles till conditions for their effective realization are achieved in future This was the simple reason for making the articles of Part IVth non justiciable but some how it has been assumed due to this that they enjoy a subsidiary status In fact many important rights have been included in the Directive Principles towards the realization of which the State has to move Thus the rights of the Part IVth of the Constitution are the ideals of Our Constitution and it is the constitutional duty of the State to move in that Direction However, very often the realization of the circumstances as expressed through the ideals of Directive Principles have been hampered and thwarted by the rigid interpretation of the constitution in the defence of certain Fundamental Rights The Fundamental Rights represent some thing static, they represent those conditions of rights which already exist The Directive *Principles represent dynamic ideals of the future Surely, the* existing conditions and facts as represented by Fundamental Rights are important but future ideals are still more important If Dire

ctive Principles are ignored one ignores the future Fundamental Rights There can not be any fixity, regarding the concept of Fundamental Rights in future a time may come when due to favourable social conditions, many of them will have to be deleted e g the right regarding untouchability (article 17 of the Indian Constitution), regarding special provisions for backward and scheduled castes Similarly many provisions of Directive Principles such as that of the right to adequate means of livelihood, right of equal wages, right of the maintenance in the old age etc will be transferred to Chapter IIIrd after appropriate amendments of the constitution The supremacy of the Directive Principles over existing fundamental rights lies in the fact that they provide the guide line of the rights of future depending on the changed socio-economical conditions the articles of Directive Principles will be converted into justiciable rights and will be transferred to part IIIrd of the Constitution A balance between the existing facts and future ideals has to be kept but such expectations have been belied because Chapter of Fundamental Rights is considered as sacrosanct In the case of Champakam Dorairajan Supreme Court held that the Directive Principles of State Policy have to run as subsidiary to the Chapter of Fundamental Rights

The issue of relative emphasis on the values of these two parts is fundamentally related *to the role* of the state in modern times regarding lives of the people Those who believe that State should *interfere* least in the economic functions of the citizens, lay more emphasis on the statusquo of Fundamental Rights, and others who believe that State should interfere for regulating the economic *system* of the country because without it the weaker section of the community may not enjoy proper and suitable conditions of life maintain that many existing Fundamental Rights are the symbols of existing inequalities and hence many Fundamental Rights should be suitably amended Thus in the final analysis the conflict of Fundamental Rights and Directive Principles becomes the conflict of haves *and* haves not' and therefore Late Pt Nehru said in *Lok* sabha on 14th March, 1955 that if we accept the interpretation of the Supreme Court, 'there *is* an inherent contradiction between the Fundamental Rights and Directive Principles of our Constitution and it is upto this *Parliament to remove that contra-*

diction and make the Fundamental Rights subserve the Directive Principles "

More often our Constitution has been interpreted particularly in relation to Fundamental Rights on the basis of the ideals and principles of constitutions of other countries and it has been often missed that our constitution has been framed to solve our own problems which are different from those of other countries due to historical and social consequences For a correct understanding and interpretation of the constitution its historical background and the aim and purposes for which the constitutions are made should not be ignored the articles of the Constitution should not be interpreted in isolation having no organic relation with the history of the movement which preceded the establishment of the constitution

In this work I am mainly concerned with the conflict of Fundamental Rights and Directive Principles regarding the issues and problems of economic and social nature only which create obstacles in the realisation of an egalitarian society Regarding other Fundamental Rights we are not concerned at all In this work I have endeavoured to emphasize that constitution and institutions of political organisation should be understood in relation to their historical background that often conflict of Fundamental Rights and Directive Principles has arisen due to the rigid defence of Fundamental Rights and at times the proceedings of the constituent Assembly have not been taken into consideration, that the Fundamental Rights of the citizens are not contained only in Part IIIrd of the Constitution the classification of rights in two parts was done for the sake of expediency, those rights which could be provided immediately by the State were assigned to the part IIIrd and which State aimed to make available in future depending on its economic and other resources have been included in part IVth of the Constitution that the scope and extent of Fundamental Rights is conditioned by the economic and social needs and policies of the state the political rights are not sufficient in themselves they should lead to the establishment of economic and social rights as well, and that Directive Principles are related to an advanced stage of Indian Society and politics It is a sacred duty of any democratic Govt to implement pledges given to the public at the time of election

I have quoted the views of Pt Nehru on a scale which may appear disproportionate but this has been done on purpose in the belief that he was the guiding spirit of our Constitution both in its formative and operative phase It was Pt Nehru who fought for the realization of the establishment of Constituent Assembly, it was he who had the rare distinction and honour of introducing the Objectives Resolution' in the Constituent Assembly, which became the guiding spirit of the Constituent Assembly Pt Nehru at the time of discussions of Ist and IVth Constitution amendment Bills cleared many intricate issues of our constitution and saved the constitution, from taking a wrong direction In many places in this work I have also given long abstracts from the Judgements and decisions of various courts, and Supreme Court of India, this also has been done with the specific purpose of making the background of the controversy under discussion amply clear Where ever some comments have been made on the views and decisions of the courts they have been done with utmost respect and deference to the Hon ble Judges and judiciary, they are within the limits of academic discussions and they have been based on the support of the views of eminent authorities on the subject

This work in substance was ready for submission in July 1966 but in the meanwhile before the Supreme Court of India Constitutional validity of the 17th Amendment Act was challenged and this case was related to Fundamental Rights and the power of amendment of the Parliament in relation to Fundamental Rights and therefore I had to wait for the decision of the Supreme Court on that issue The Supreme Court of India by a slender majority of one judge on 27th Feb, 1967 gave a decision that Fundamental Rights can not be amended by the Parliament Necessary cognisance of this decision had to be taken

I express my deep sense of gratitude and indebtedness to late Prof S L Audichya Head of the Deptt of Political Science and Dean of the Faculty of Social Sciences of Jodhpur University Jodhpur for scholarly and resourceful guidance and help regarding this work I also express my sincerst thanks to the authorities of the Library of Parliament New Delhi, Sumer Public Library Jodhpur, High Court Library Jodhpur and Central

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I

INTRODUCTORY

Very often we hear of political ideals such as JUSTICE, LIBERTY, WELFARE STATE, PUBLIC WELFARE, RESPECT FOR LAW, 'CONSTITUTIONAL GOVERNMENT' etc. In the long history of Political Thought meanings of such terms have been variously modified and understood. Meanings of these terms have to be understood in the light and context of the institutions through which these ideals are to be achieved and the society in which these institutions operate. No concept of the State and the Constitution is ever intelligible save in the context of its historical phase and the needs of the society. So far India is concerned one cannot properly evaluate the significance of these terms unless one keeps in mind not only the Legal Apparatus the CONSTITUTION through which these ideals are to be realized but also the historical background, ethical and humanitarian motives of the constitution. The Ethical and humanitarian elements underlying Law is all pervading in the Indian life. Behind the removal of untouchability and prohibition of the use of alcohol and wines is not merely a legal or political idea but also the ethical one. Behind the idea of the removal of the poverty is the humanistic ideal that poverty is a serious draw back for the fulfilment of the Human personality. The programmes for the upliftment of the backward sections of the Indian Community for raising the material and cultural standards of the masses, compulsory primary education,[1] abolition of Begar[2] and untouchability,[3] prohibition of child labour,[4] creation of just and humane conditions of work and maternity relief,[5] public assistance in old age, sickness[6] etc. draw inspiration from humanistic ideals. In the ultimate analysis the ethical and political aspects of the lives of citizens are the facets of the same fundamental issue the Human personality the Human welfare. This is all the more true for the Indian Constitution because under the impact and influence of many freedom fighters notably Mahatma Gandhi the ethical and political ideals have been interwoven into one pattern

The significance of this can be understood by the oft quoted statement of Gandhiji that means are as important as the end' For this reason violent revolutions drastic and brutal measures have no place in the political philosophy which sustains Indian Constitution and we have therefore chosen democratic means of progressive legislation to achieve our aims and ideals The means have to be noble good and virtuous If this aspect of the Indian life is ignored our foreign policy our programmes for social welfare, efforts for equalization of public wealth the moving forces behind Five Year Plans the significance of the Directive Principles of State Policy cannot be rightly appreciated The lines of the Preamble of the Indian Constitution —

WE, THE PEOPLE OF INDIA having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens

JUSTICE social economic and political

LIBERTY of thought expression belief faith and worship

EQUALITY of status and of opportunity and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation

have an undercurrent of Humanism and ethical principles They all revolve round MAN because without these the individual is subjected not only to legal but moral economic and social injustice

Gandhiji was very fond of the following famous lines of poetess Mira Prabhu Haro Jan ki Pir These lines show his concern for the welfare of the common man

Many provisions of the Indian Constitution and specially those of Directive Principles are agency to translate the ideals of Gandhiji into practice [7] Pt Nehru s Socialistic ideals also revolved round similar humanistic considerations—the alleviation of the sufferings of the poor subjected to alien rule and feudalistic and capitalistic systems For him socialism meant service to the common man an Humanistic ideal Dr R K Rajan Head of the Department of Economics Delhi University commenting on Nehru s Socialism said the case for Socialism rested today not so much on the considerations which Marx

and Others focussed attention on, but on essentially humanistic grounds Mr Nehru's socialism as a goal offered the best prospect of meeting the requirements of Humanism and the challenge of modern science and technology in a society which at least was two centuries behind the times' 8

Our Constitution has been enacted and accepted on behalf of the people of India and its existence is for the achievement of the welfare of the masses and not of a few The quintessence of our argument is that in the Indian Constitution, the ideals of Humanism and Socialism have become one and these are the two guiding stars for its right understanding

The citizenship is not merely a sort of possession and gaining a status It means participation and sharing on equal footing with others in various functions of society and the nation The aim of the political organization is to discover what place citizens merit in the community based on fair and equal opportunities Before independence though we were citizens in the ordinary sense of the term but we did not have effective share in running administration of the Government and the production of the country After independence it was expected that political organization will be such that people will not only enjoy political equality but economic and social equality as well We raised our voice against the privileges - Economic Social and political of the few and fought for the privileges of the common man After achieving independence it became our aim and duty to create institutions through which the privileges of the common people may be established - that is to promote the welfare of the people a social order be secured in which justice social economic and political shall inform all the institutions of the national life It has been stated earlier that true citizenship implies active participation in the affairs of the State, which presupposes the existence of a society of equals where few people do not enjoy at the cost of others Political equality is not enough, there should be conditions of economic and social equality as well Without this democracy is bound to become the handmaid of economic power It has been very aptly said that economic side of democracy is socialism Prof Laski rightly says "There cannot, in a word be democracy unless there is socialism"9 We have to see what

our Constituion endeavours to do for the economic and social emanicipation of the general mass? If the constitution is tested on this touch stone and if it proves so we can feel satisfied otherwise it becomes the Consitution of a few people with vested interests The essence of the matter is that there are two distinct claims to power one based upon the right of property and other vested interest and priveleges and the second upon the welfare of the greater number of human beings—the Democracy We have accepted democratic Republic not an oligarchic government

It will be disastrous if it is purported to prove that through this Constitution the interests of big property and capitalist classes are to be safeguarded specially in the sense that, it will be a perverted evaluation of values and aims Through various resolutions the Indian National Congress long before Indian independence pointed out that what will be the political and economic shape of the free India by the abolition of Zamindari and big estates and nationalization of Key industries and services [10] Long before independence it was declared that Socialism is the aim of Independent India Although Gandhiji in the beginning had differences with Pt Nehru regarding Socialism and held the view that Zamindars and rich people should be permitted to hold their possessions as Trustees of the people but later on he was disillusioned on this issue Dr O P Goyal commenting on this point says Disillusionment came only when it was very late for him to do anything else His Secretary Shri Pyarelal tells us in The last phase Vol I how Gandhi Ji had realized in his later life that his capatalist friends would not become Trustees of his imagination He had started advocating stronger measures Pyarelal told the international seminar organized by UNESCO 'On Gandhian outlook and Technique in New Delhi that Gandhi had come to believe that the rich must be dispossesed of their wealth and that this can be done without the necessity of paying any compensation [11] This is clear cut socialism

In any system of Government there are and ought to be certain conceptions behind the institutions which they ought to embody the ideals of valuable political life to which these institu

tions ought to be instrumentals We have to enquire and to establish to what ideals our constitution is instrumental ?

It will be fruitful to trace the ideals of our constitution through the history of freedom struggle and to see how these ideals were intended to be materialized through the provisions incorporated in the Indian Constitution as particularly enshrined in the Fundamental Rights and the Directive Principles of the State Policy and also to show that in the ultimate analysis mostly Directive Principles are the means for the establishment of fundamental rights of the backward and poorer sections of the community in future and to show that much which was promised and aimed at is contained in them The significance of the Directive Principles should be viewed and understood in this light They are the means to establish expected social circumstances They are to be viewed as means of achieving ideals of the historical evolution of the ideals of freedom general welfare and economic social justice These directive principles very briefly but eloquently lay down a policy of action for the different State Governments and the Central Government and in a sense they embody solemnly an recognize the validity of the charter of demands which the weaker sections of the citizens suffering from socio-economic injustice would present to the respective governments for immediate relief [12]

In real democracy community should be of equals both politically and economically There cannot be much meaning in granting the equality if means to get it are not equally available It is quite clear that a rich man enjoys advantages in this regard over a poorer man ' The survival of political democracy today in all over the World definitely impossible unless it can conquer the central citadel of economic power ' [13]

Pt Nehru was one of the chief architects of our constitution and throughout his political life was impregnated with the ideals of socialism His interest in socialism started with the ideals Socialism It is quite natural to infer that he must have tried to enshrine these ideals of socialism in the Indian Constitution It does not fit in the scheme of things and affairs that he would have agreed to a constitution supposed to be protecting vested interests which could create obstacles in the realization of India of his dreams and hopes Michael Brecher writes the Economic Pro'"

gramme Committee of the Congress, under Nehru's leadership had set down the broad lines of policy nationalization of public utilities and all defence and key industries public ownership of monopolies the destruction of the managing agency systems as early as possible "[14]
As soon as Indian Constitution became operative many important cases came before the courts for decisions and mostly they were regarding abolition of zamindari, acquisition of lands and property movable or immovable etc for public purposes and compensation for the acquired properties In fact a class war of legal nature started on the forums of the Indian courts on the issues of the fundamentals of our constitution and political and social organization Mostly these cases hinged on the relative value of the Fundamental Rights and the Directive Principles and also raised in turn the question of the relative position of the judiciary and the Parliament in relation of the provision of these two chapters [15]

In the earlier phase of the operation of our constitution Courts more often interpreted the provisions of the Indian Constitution in general and Fundamental Rights in particular on the basis of the nature of the Constitution of U S A and equalized our Fundamental Rights to the Bill of Rights of the Constitution of the U S A [16] ignoring the fact that the political background of the institutions of these two constitutions and countries is different and due to these differences they can not be expected to produce similar aims aspirations and results The Constitution of U S A more or less is the product of 18th 19th century political philosophy and Laissez faire economic theory that the state as far as possible should abstain from interference in the economic affairs in the name of Liberty and Freedom and should encourage free enterprise Our Constitution is based on the theory and background that state should regulate the economic system so as to produce ECONOMIC JUSTICE and equality of opportunities and special care for the upliftment of backward and weaker sections of the community For this reason through planned economy (Five Year Plans) the state is expected to establish a new social order for the welfare of the people by establishing institutions and creating circumstances in which Justice social economic and political will be made available in all walks of life where there is no concentration of wealth in the private hands to the common detriment and where the ownership of the

means of production of wealth is controlled regulated or owned by the state for the common good The Constitution of U S A is for the defence of free enterprise Capitalist system etc while ours is specifically for opposite aims, that is it is socialistic in aspiration To understand and interpret these two constitutions which are supposed to uphold quite opposite economic systems on the same principle does not seem to be sound Such interpreterers have been often misled by some similarities because both these Constitutions are written and contain Fundamental Rights but have ignored the differences of motive forces and real aims The real ideals of the two constitutions have been confused

Socialistic aspirations of our Constitution have been mostly incorporated in the Articles of Directive Principles With due deference to the courts it is to say that they have over emphasized the importance of Fundamental Rights Chapter, and under estimated that of the Directive Principles and even eminent commentators of our Constitution have held such views [17] 'Hence the question of priority in case of conflict between the two classes of provisions may easily arise hence in case of any conflict between Part III and IV of the Constitution there is no doubt that the former will prevail in the courts [18] and supports following judgements of the Supreme Court In the case of Champakam Dorairajan Vs State of Madras commenting on the relative value of these two chapters and seeking two establish a perpetual principle of the interpretation of the constitution Justice Dass on behalf of the Supreme Court held The learned Advocate General of Madras even contends that the provisions of Article 46 over ride the provisions of Article 29(2) we reject the above noted contention completely The Directive Principles of the State Policy have to conform to and run as subsidiary to the chapter of Fundamental Rights In our opinion that is the correct way in which the provisions found in Part III (Fundamental Rights) and IV (Directive Principles have to be understood The chapter of Fundamental Rights is a sacrosanct and not liable to be abridged by any legislative or executive act or order except to the extent provided in the appropriate ARTICLE IN PART III [19] Similarly Dr N C Chatterjee pointed out in the Lok Sabha on 11th April 1955 The purpose of the Fundamental Rights Chapter was that no matter what—majority you have there are certain

forbidden sectors on which you will never tresspass The purpose of Fundamental Rights is that certain legal principles should be established beyond the reach of Parliament and the Executive to be applied by the courts of law you cannot enforce Directive Principles Our Constitution says expressly that they are non justiceable there lies the main difference [20] In opposition to these views at the time of consideration of the Constitution Amendment Bill (IVth Amendment) the late Prime Minister Pt Nehru asserted in the Lok Sabha on 14th March 1955 that if they (Judges) are wiser than we are in interpreting thing but I say if it is correct then there is an inherent contradiction in the Constitution between the Fundamental Rights and the Directive Principles of State Policy Therefore again it is upto the Parliament to remove that contradiction and make fundamental Rights subserve the Directive Principles of State Policy if I may say so with all respect to the judiciary they donot decide about high political or social or economic or other such questions It is for the Parliament to decide The *ultimate authority* to lay down what political or social or economic law we should have is Parliament and Parliaments alone [21] Thus there are two assertions about the relative value of Fundamental Rights and Directive Principles One view asserts that Fundamental Rights are superior to the Directive Principles[22] and the other that Fundamental Rights should remain subservient to Directive Principles and if they are not held so by the courts they should be made as such through appropriate amendments of the Constitution for a new socio economic organization The above quoted judgement of the Supreme Court and the arguments of Dr N C Chatterjee and other authorities and writers support the contention that the provisions of Fundamental Right Chapter cannot be abridged by any other executive or legislative act and they are the grounds where there will be no tresspass either from the Parliament or executive while on the other hand according to Pt Nehru and his many colleagues[23] Parliament must tresspass these grounds in the interest of promised economic and social policy as envisaged in the Directive Principles and Parliament is the ultimate authority not judiciary to prescribe the economic and social order of the Country This conflict of the question of the relative priority of Fundamental

Rights and Directive Principles thus also raises the question of the relative constitutional competency of the Parliament and the judiciary [24] The above mentioned views of Pt Nehru indicates that Parliament is Supreme and expresses that in essence our Constitution is more like the British Constitution because *in both there is Parliamentary supremacy* although under Indian Constitution the Parliament has got some limitations Thus we have in our Constitution mixed principles of a written and an unwritten Constitution This mixing of the principles of different types of constitutions is one of the basic causes which has created confusion and contradictions in our Constitution It is difficult to reconcile and harmonise these contradictory principles and as a consequence of this mixing two groups of opinions have come to exist in India According to one the State should function exactly within the boundaries prescribed by the Constitution and reviewed by the Courts These boundaries are to be determined by the decisions of the courts and the interpretation of the judges According to the other view, the parliament representing the wishes of the people who are the source of sovereignty should ultimately be in a position to assert itself generally and for progressive legislation specially The supporters of the sanctity of Constitution of Fundamental Rights have adapted a sort of conservative attitude specially for the protection of the property rights and are against the so called trampling, and playing fraud with the constitution by a series of various amendments to facilitate the taking over the private rights in property and other enterprises While others maintain that the provisions of the Fundamental Rights should not come in the way of social reconstructions and should not act as back pulling chain in the Socio Economic progress of the peoples [25] Thus naturally a situation has been created, in which few people interpret and view the constitution and specially Directive Principles and Fundamental Rights from one angle and others from a different one By incorporating the protection of property *rights and freedom of* trade and avocation under Fundamental Rights we have given rights to one section of the community and by accepting the principle of social and economic justice in the Preamble of the Constitution and consequentially accepting the way of social and economic reorganization and progress as shown by the Directive Principles of State Policy we have created rights on same-

issues and points for the other section comprising the majority of the people The poorer a d 'HAVFS NOT' people interpret Directive Principles as their Fundamental Rights Thus a conflict has arisen between the Fundamental Rights of the 'HAVES and 'HAVLS NOT and this is the peculiar dialemma of the Indian Constitution, and that is why it has been interpreted differently by the Courts of Law and Political Leaders in the Parliament as shown above when we referred to the decision of the Supreme Court and abstracts from the speeches of Pt Nehru An effort has been made in this thesis to establish a probable theory for the right evaluation and understanding of the Directive Principles in relation to opposing and contradicting Fundamental Rights

By adapting PROCEDURE ESTABLISHED BY LAW' in place of 'DUE PROCESS OF LAW, we have established legislative supremacy This important point should be kept uppermost in our minds when we attempt to understand our Constitution regarding respective position of Parliament and Judiciary Chief Justice Kania Justice Mukherjee and Justice Patanjali Shastri etc maintained in the case of Gopalan v/s State of Madras that by adapting the phrase 'PROCEDURE ESTABLISHED BY LAW, the constitution gave legislature the final word to determine the law [26] To emphasise this point Shri Mukherjee held The view that judiciary should be endowed with power to question the Law not merely on the ground that it was in excess of the authority of the legislature but also on the ground that the Law violates some Fundamental Principles as regards the protection of the life and liberty of an individual did not find favour with the authors of the Constitution and they considered that it would be preferable to place the ultimate authority for the confernment of this fundamental right in Parliament rather than to give the judiciary the authority to sit in judgement over the bills of legislature [27]

Dr Ambedkar gave the following explanation for the ommission of the words 'due process of Law' and the substitution of the words '*according to procedure established by law* *In our* Constitution The question of due process raises in my judgment the question of relationship between the legislature and the judiciary In a Federal Constitution it is always open to the judiciary to decide whether any particular law passed by the legis

lature is ultra vires or intra vires in reference to the powers of legislation which are granted by the Constitution to the particular legislature If the law made by a particular legislature exceeds the authority or the power given to it by the Constitution, such law would be ultra vires and invalid That is the normal thing that happens in all federal constitutions Every law in a Federal Constitution whether made by the Parliament at the Centre or made by the legislature of a State is always subject to examination by the judiciary from the point of view of the authority of the legislature making the law The 'due process clause in my judgment, would give the judiciary the power to question the law made by the legislature on another ground That ground would be whether *that law is in keeping with certain fundamental* principles relating to the rights of the individual In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law apart from the question of the powers of legislature making the law The law may be perfectly good or valid so far as the authority of the legislature is concerned But, it may not be a good law, that is to say, it violates certain fundamental princip es and the judiciary would have that additional power of declaring the law *invalid The question which arises in considering this matter is* this We have no doubt given the judiciary the power to examine the laws made by different legislative bodies on the ground whether that law is in accordance with the powers given to it The question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles

There are two views on this point One view is this that the legislature may be trusted not to make any law which would abrogate *the fundamental rights of man, so to say, the fundamental* rights which apply to every individual and consequently there is no danger arising from the introduction of the phrase 'due process' Another view is this *that it* is not possible to trust the legislature the legislature is likely to err, *is* likely to be led away by passion by party prejudice, by party considerations and the legislature may

make a law which may abrogate what may be regarded as the fundamental principles which safeguard the individual rights of a citizen We are therefore placed in two difficult positions One is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legis lature on the ground that it is not good law in consonance with fundamental principles Is that a desirable principle ? The second position is that the legislature ought to be trusted not to make bad laws It is very difficult to come to any definite conclusion There are dangers on both sides For myself I cannot altogether omit the possibility of Legislature packed by party men making laws which may abrogate or violate that we regard as certain funda mental principles affecting the life and liberty of an individual At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legis lature and by dint of their own individual conscience or their bias or their prejudices can be trusted to determine which law is good and which law is bad It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say any thing I would leave it to the House to decide in any way it likes "[8] We know that ultimately the Constituent Assembly adop ted the phrase PROCEDURE ESTABLISHED BY LAW and thus decided to drop the American principles of judiciary the due process of law

Summing up the above discussion it is to be proved that our Con stitution is based on the ideals of Socialistic Humanism Secondly much that was aimed and promised for socio economic eman cipation of the masses has been included in the Directive Principles i e Directive Principles are the agencies for achieving the ideals of Socialism Humanism and egalitarian society Through Directive Principles a new social and economic order has to be established to bring about conditions and circumstances of Econo mic and Social justice and real equality of opportunities Thirdly, Directive Principles are of dynamic nature many of its articles are the fundamental rights of future Fourthly if some Articles of Fundamental Rights Chapter come in conflict with the provisions of the Directive Principles through which the aims and expectations of a new social and economic order are to be realized they should

be amended, and finally the various Articles and the Constitution as a whole should be viewed and understood in continuation of the historical evolution of political ideals, that is the Constitution should be studied in organic relation to its historical background and historical consequences

The Constitution and Law has a social function to perform, but a flexible instrument of social revolution and a mightly weapon to achieve socio-economic justice through effective implementation of the Directive Principle of the State Policy Whenever it is found that some Fundamental Rights create difficulties for the implementation of the Directive Principles the former have to be amended suitably Commenting on this issue Ex Chief Justice Shri Gajendra gadkar emphatically puts forward his views in the following words

> It will thus be clear that the concept of a welfare state changes the entire complexion of the role of democracy towards society Democracy can no longer be a passive witness to the socio-economic struggle and tensions It has to give up its policy of non alignment in such disputes because if the state is non aligned the result of the struggle is a foregone conclusion The fight between the rich and the poor the educated and the uneducated the employed and the unemployed the healthy and the sick is an entirely unequal fight all advantages being on one side and all disadvantages being on the other If the state were to leave the decision of this fight to the unfettered rule of the free market in the belief that the survival of the fittest is the natural law then of course, the democratic way of life will be powerless to meet the challenge thrown by communism
> As soon as the democratic state embarks upon this adventure of achieving the ideals of a welfare state it inevitably turns to law as its greatest ally in the crusade The function of the democratic state and its role assume wider proportions and cover a much larger horizon and in assisting the state to achieve these ever expanding objectives the function and the role of law correspondingly enlarge and cover a wider horizon It is in this sense that the role of law in a democratic state is integrally connected with the role of the

democratic state itself vis a vis its obligations to the citizens of the state We reach a stage in the progress of the democratic way of life where law ceases to be passive just as democracy ceases to be passive and the purpose of law like that of democracy becomes dynamic and that naturally raises the eternal question about the adjustment of the claims of individual liberty and freedom on the one hand, and the claims of social good on the other It is this dual which a dynamic democracy has to face and it is in the harmonious and rational settlement of this dual that law has to assist democracy That takes us to the question which we have posed for our discussion--the relation of law with liberty and social justice [29]

The dynamic element of our Constitution has been mainly incorporated in the Chapter of Directive Principles If we want to establishd expected social circumstances as enshrined in the Directive Principles the citadel of economic power has to be broken Around some Fundametal Rights of the Indian Constitution a fortress and a citadel of Vested economic power has been sought to be established The Directive Principles of our Constitution are thus a dynamic agency for the establishment of welfare state to bring about desired socio--economical reorganization based on fair and equitable distribution of wealth and opportunity They are the objectives of National policy



2 The origin and background of the problem of the conflict of fundamental rights and directive principles

It has been pointd out in the previous chapter that there are contradictory assertions about relative values of Fundamental Rights and Directive Principles by eminent authorities In this Chapter the origin and background of this problem is proposed to be discussed

Article 15 (1) of the Indian Constitution reads "The State shall not discriminate against any citizen on grounds only of religion race, caste sex place of birth or any of them" Clause (4) of this Article was inserted after the 1st amendment of the Constitution in 1951 which now reads as "nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled Castes, and Scheduled Tribes This amendment was made to remove contradictory elements in these two chapters and specially as a result of judgement of Supreme Court in famous cases of 'Dorairajan V/s State of Madras and C R Srinivasan V/s State of Madras 20 (A I R 1951 case No 270, 271) The facts of cases are as under

"It appears from the judgement of Dass J (Justice) that the State of Madras maintained four medical colleges and that only 330 seats were available (for admission) for students in those four colleges Out of these 330 seats 29 were reserved and the rest were apportioned between four distinct groups of districts in the State, similarly the State of Madras maintained four Engineering Colleges, and the total number of seats available (for admission) for students in those Colleges were only 395 Out of these, 33 seats were reserved and the rest were "apportioned between the same four distinct groups of districts For many years before the commencement of the constitution of India the seats in both the Medical Colleges and the Engineering Colleges so apprortioned between the four distinct group of districts used to be filled up according to certain proportions set forth in what used to be called the communal G O For every 14 seats to be filled by the selection committee

candidate used to be selected strictly on the following basis

Non Brahamin (Hindus)	6
Backward Hindus	2
Brahamins	2
Harijans	2
Anglo Indian and Indian Christians	1
Muslim	1

Subject to the aforesaid regional and what have been claimed to be protective provisions selection from among the applications from a particular community from each of the group of districts used to be made on certain principles based on academic qualifications and marks obtained by the candidates Now on 7th June 1950, Shrimati Champakam Dorairajan made an application to the High Court of Madras under Article 226 of the Constitution for the protection of her fundamental rights under Article 15 (1) and Article 29 (2) there of By its judgement on 27th July 1950 the High Court of Madras allowed this application The State of madras thereupon appealed to the Supreme Court against this judgement Shri C R Nivasan also filed a petition praying for a writ of mandamus or any other writ restraining the State of Madras and all officers thereof from enforcing observing maintaining or following the communal G O in and by which admission in the Engineering Colleges was sought to be regulated in such manner as to infringe and involve the violation of his Fundamental Right under Article 15 (1) and Article 29 (2) of the Constitution By the same judgement the High Court of Madras allowed this application also and the State of Madras filed an appeal to the Supreme Court against it [31]

Supreme Court turned down the appeal of Madras State and gave decision that G O (Communal) infringed the Fundamental Rights of the original petitioners Both before the Madras High Court and the Supreme Court one of the points urged on behalf of the State was that the provisions of these Articles have to be read along with other Articles of the Constitution, that Article 46 (of Directive Principles) enjoins the State to promote with special care the educational and economic interests of the weaker sections of the community and in particular of the Scheduled Castes and Scheduled Tribes and with protecting them from

so ial injustice and all forn of exploitation and that this Article finds a place in part IVth of the Con titution (of Directive Principles) which lays down certain Directive Prin iples of State policy and though these provisions are not enforceable by any court, the principles therein laid do vn are ne ertheless fundamental for the Government of the country and further Article 37 makes it obligatory on t h part of the State to apply these principles in making Laws These argu ments and contentions were however reject d by both the Courts The High Court of Madras and Supreme Court of India On the question of the relative value of chapter III and IV of Fundamental Rights and Directive Principles respectively Justice Das J remarked,

' The learned Advocate General appearing for the state of Madras contends that provisions of this Article 32 have to be read along with other Articles in our Constitution He urges that Article 46 charges the State with promoting with special care the Educat ional and economic interests of the weaker section of the people

The argument is that having regard to the provisions of Article 46 the State is entitled to maintain the communal G O fixing proportionate seats for different communities and if because of that order which is thus contended to be valid in law and not in violation of the Constitution the petitioners are unable to get admission in the educational institutions there is no infringement of their constitutional rights Indeed the learned Advocate Gen eral of madras even contend that the provisions of Article 46 override the provisions of Article 29 (2) We reject the above noted contentions completely The Directive Principles of the State policy which by Article 37 are expressly made unenforceable by a court cannot override the provisions in Part III of the consti tution, which notwithstanding other provisions are expressly made enforceable by appropriate writs, orders or direction under Article 32 The chapter of Fundamental Rights is sacrosanct and is not liable to be abridged by any Legislative or Executive Act o Order except to the extent provided in the appropriate Article in Part III The Directive Principles of State policy have to confo m to and run subsidiary to the Chapter of Fundamental Rights In our opinion that is the correct way in which the provisions found in Part III and IV of the Constitution have to be understood 3.

In conclussion on behalf of the Supreme Court he further maintained "Take the case of Shri C R Shri Nivasan .. It is not disputed that he secured a much larger number of marks than the marks secured by many of the Non Brahamin candidates and yet the non Brahamin candidates who secured less marks will be admitted but the petitioner Shri Nivasan will not be admitted

what is the reason for this denial of admission except that he is a Brahamin and not a non Brahamin ? he can not get any of the seats reserved for no fault of his except that he is a Brahamin Such a denial of admission can not but be regarded as made on grounds only of his caste It is argued that the petitioners are not denied admission only because they are Brahamins but for a variety of reasons e g (a) they are Brahamins (b) that Brahamins have an allotment of only two seats out of 14 (c) and that these two seats have already been filled up by more meritorious Brahamin candidates This may be true so far as these two seats are concerned but this line of argument can have no force when we come to consider the seats reserved for candidates of other communities The classification in the communal G O proceeds on the basis of religion race and caste In our view the classification made in communal G O is opposed to and constitutes and clear violation of the Fundamental Rights For the reasons stated above we are of the opinion that communal G O being inconsistent with the provisions of Article 29 (2) in Part III of the Constitution is void under Article 13 [34]

On careful perusal of this judgement many important points come before us for consideration This judgement seeks to establish a perpetual principle of interpretation not only of Fundamental Rights in relation to Directive Principles but also to other provisions of the Constitution as well [35] This judgement says in most explicit and categorical language The Chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or Order except to the extent provided in the appropriate Articles This means a categorical emphasis that there is no Legislative or Executive Act or Order which can abridge the operation of this Chapter save as provided in the appropriate Article This assertion does not appear to be fully correct The suspension of the Fundamental Rights can be brought about by

the Con titution while inte preting Fundamental Rights This is a sort of attitude of untouchability towards the Directive Principles, in favour of high caste Articles of Fundamental Rights supported as such by the Courts If the historical background of our Cons titution and debates in the Constituent Assembly were kept in mind such situation would not have come and the Articles of Chapter III should have been considered along with other Articles of the Consitution including those of Chapter IV For a balanced and harmonious view A Constitution likewise (like a statute) must be read as a whole The whole Constitution is to be examined with a view to determining the intention of each part, and the Construction must be uniform Particularly the Constitution of India is a very detailed one and the whole of it has to be read with the same sanctity without giving undue weight to any part e g Part III except to the extent one is legitimately and clearly limited by the other[37] Further Willoughby has been quoted by D Basu 'The Constitution is a logical whole each provision of which is an integral part thereof and it is therefore logically proper and indeed imperative to construe one part in the light of the provision of the other part[38] It is not the question of one or two Articles of Fundamental Right Chapter in relation to those of Directive principles but about the relative values of these parts of our Constitution in their totality and of *the overdue emphasis that Chapter of the Fundamental* Rights is sacrosanct and its Articles are not to be viewed along with other Articles of the Constitution[39] In fact the question of their relative values and importance hinges on much broader issues such as on the realization and establishment of a new social order free from economic exploitation and how certain Articles of Fundamental Rights Chapter are interpreted so as to block the entire historical process? The problem of the relative value of these two chapters must be viewed in relation of Agrarian reforms nationalization of key industries and services etc , and the realization of the society as expressed in th Articles of Directive Principles mainly such as welfare of the people by the establishment of a social order in which justice social economic political shall inform all the institutions of the national life and that all citizens have adequate *means of liveli*

hood that the economic system does not result in the concentration of wealth and means of production are not used to the common detriment that ownership and control of the material resources are distributed for the common good where there is no exploitation of children on misc necessities and pressure etc. The question of the relative value of these two chapters became practical problem not only in the case which we have discussed in this chapter viz Champakam vs State of Madras but also on other important decisions of the courts e.g. Moti Lal vs State of U P (A I R Allahabad 257) Kameshwar Singh vs State of Bihar. Shortly before the commencement of the Constitution the Government of Uttar Pradesh conceived the idea of running the road Transport Services as a State monopoly and with a view to oust the private bus owners who were already in field the government began to cancel the permits already issued to private operators in exercise of its power under Sec 42 (3) of the Motor Vehicle Act[40]. On the commencement of the Constitution some of the private operators whose permits had been cancelled filed petitions under Article 226 of the Constitution praying for declaring the use of the said Act as unconstitutional as it infringed their rights guaranteed by Article 19(1) of the Constitution. The majority decision of the Allahabad High Court declared that the action of the State was unconstitutional. The State felt that no scheme of nationalization of any trade business industry or service would be possible because all these steps would be declared unconstitutional by the courts that the actions of State infringe the Fundamental Rights of the citizens. Many Acts dealing with Zamindari abolition were also declared unconstitutional because it was interpreted by some Courts (of Bihar Kameshwar Singh vs State of Bihar)[41] that they infringed certain fundamental rights of the citizens. Thus we note the significance of the problem of the relative value of these Chapters is not related to one or two Articles here and there not on the point whether Article 46 overrides the provision of Article 29 (2) or vice versa, but on broder issues of national Social and Economic Policies and the opposition of entrenched vested interests taking shelter behind some Fundamental Rights. The problem under discussion is to be viewed and judged in this context of broder issues at stake

It is to be noted that if the deciding Court does not keep in mind the historical background and debates in the Constituent Assembly it may arrive at conclusion which may not be warranted by the actual facts This point is being illustrated in the following lines In support of his arguments in the judgement of Champakam v/s the State of Madras,[42] Justice Das further said 'It will be noticed that Article 16 which guarantees the Fundamental Right of Equality of Opportunity in matter of public employment and provides that no citizen shall on grounds only of religion race caste sex descent, place of birth residence or any of them will be ineligible for or discriminated against in respect of any employment or office under the State also includes a specific clause in the following terms Nothing in this Article shall prevent the State from making any provision for the reservation of citizens which in the opinion of the State is not adequately represented in the Services under the State [43] He argues that according to this special provision the State was meant to make reservation for employment in the interest of backward classes but no such reservation was intended by the makers of the Constitution for admission in to educational institutions otherwise similar provision would have also existed in the Article 29 If the arguments founded on Article 46 were sound then clause 4 of Article 16 would have been wholly unnecessary and redundant Seeing however the clause (4) was inserted in Article 16 the ommission of such an expre s provision from Article 29 can not but be regarded as significant It may well be that the intention of the Constitution was not to introduce at all communal considerations in matters of admission into any educational institution maintained by the State or receiving aid out of State funds The protection of backward classes or citizens may require the appointment of members of backward classes in State services and the reason why power has b en given to the State to provide for the reservation of such appointments for backward classes may under those circumstances be understood That consideration however was not obviously considered necessary in the case of admission into an educational institution and that may well be the reasons for the omission from Article 29 of a clause similar to clause (4) of Article 16 [44]

This observation and conclusion is based on ignorance of facts and has no relation to what actually transpired in the Constituent Assembly When this Article was under consideration in the Constituent Assembly Prof K T Shah had moved an amendment on 29th November, 1949 that at the end of clause (2) of Article 9 (corresponding to the Article 15 of the present constitution) the following be added ' Nothing in this Article shall prevent the State from making any special provision for women and children — o for schedu ed castes or backward tribes for their advantage, safeguard or betterment 45 as Justice Dass wished it to be there if State wanted to make special reservation for the admission in educational institutions But Dr Ambedkar had opposed the inclusion of this special provision for backward classes in the educational institutions on the following plea The amendement may have just the opposite effect The object which all of us have in mind is that the scheduled castes and scheduled Tribes should not be segregated from the general public For instance none of us I, think would like that a separate school be established for the scheduled castes, when there is a general school in the village open to the children of the entire community If these words are added it will probably give a handle for a State to say Well we are making special provisions for the scheduled castes To my mind they can safely say by taking shelter under the Article if it is amended in the manner the Professor wants it I therefore think that it is not desirable amendment 46 It is thus clear that if the Honourable Judge had kept the relavent debates of the Constituent Assembly in mind regarding this Article he would not have arrived at the conclusion to which he arrived at and to which he attached so much significance and would have clearly understood, why special provision for reservation of backward classes for admission to educational institution was not incorporated originally in the Article and would not have suggested that the authors of the Constitution have deliberately omitted such provisions because they did not want to make special provisions for backward classes for admission in educational institution on the basis of communal and other considerations as they have done so regarding the appointment and employment opportunities However

due to that decision of the court the relevant clause for the protection of backward classes for admission in educational institutions has been inserted in the Constitutions as a result of first amendment of the Constitution

To make the matter more clear let us see what happend in the parliament when the Bill for the 1st amendment of the Constitution was under consideration Pandit Nehru said in Lok Sabha I come now to deal with those three special Articles on which a great deal of argument has turned 'The House knows very well that this matter came up in this particular form because of certain happenings in Madras The Government of Madras State had issued a G O —I don t know its details according to which certain reservations were made for certain classes and communities The High Court of Madras said that this G O was not in order that it was against both the spirit and the letter of the Constitution Nevertheless, while it is quite valid and we bow to the decision of the High Court of Madras in this matter the fact remains that we are faced with a situation for which the present generation not to blame Therefore some sort of special provision must be made We have to do some thing for the communities which are backward educationally economically and in other respects if we wish to encourage them in these matters We come up against the difficulty that on the one hand in our Directive Principles of Policy we talk of removing inequalities of raising the people in every way socially, educationally and economically of reducing the distances which separate the groups or classes of individuals from one another on the other we find ourselves handicapped in this task by certain provisions in the Constitution We have to give them opportunities economic educational and other Now, in wanting to do so we find that we are up against certain provisions in the Constitution regarding equality and non discrimination We arrive at a peculiar tangle namely that we cannot have equality because in trying to attain equality we come up against certain principles of equality laid down in the Constitution That is a very peculiar position We cannot have equality because we cannot have non discrimination for if you are thinking of raising those who are

down you are somehow affecting the status quo, undoubtedly, you are thus said to be discriminating because you are affecting the statusquo If this argument is correct, then we cannot make any major change in the statusquo whether in the economic or in any other sphere, Clearly, whatever law you may make you have to make some change somewhere We cannot ignore the existing facts Therefore one has to keep a balance between the facts as we find them and the objectives and ideals that we aim at If we stick to the existing facts alone then we are static and unchanging and shall be giving up our objectives and the Directive Principles of Policy laid down in the Constitution *Hence* we must find a middle way between our objectives and the existing facts We must keep our ideal in view and then take steps which will gradually carry us in that direction [47]

The important point for discussion and understanding is that due to historical consequences society in India as a fact came to be divided into various strata Those who have remained backward have to be elevated and naturally the State has to make special provisions according to the directions of the Directive Principles Now these special provision, come in the way of Right of Equality guaranteed under Fundamental Rights Chapter Thus a situation arises where the rights of backward and poorer communities as envisaged in the Directive Principles come in conflict with the Fundamental Rights of other *citizens* This again becomes a question of contradictions between Directive Principles and some Articles of Fundamental Rights and which of the two should get priority Nobody will deny that those who are backward should be specially encouraged If this is accepted it is imperative that the force of some Fundamental Right, which oppose this programme has to be diluted Before independence our leaders have been emphasizing that backward sections of the community will be encouraged and uplifted How can we now abstain from that duty and those promises? Should we allow its materialization to be hampered by certain Fundamental Rights? If it is done it will tantamount to be going back on the previous assurances and promises and Parliament can not ramain a silent spectator to this tragedy Therefore it is suggested that for evaluation of the true value of Directive Principles in

relation to Fundamental Rights consideration should be given to historical facts and their consequences and the Fundamental Rights should be interpreted and understood in this context and not in isolation of other Articles of the Constitution and facts of the society That is why it has been said in the introductory chapter that no theory of State and Constitutions is ever intelligible save in the context of its historical phase and the society for which they work If there were not so much differences and inequality between different sections of the Indian community and social and economical conditions were on equal plane then of course the arguments and decisions held by the courts would have been appropriate but in the context of the existing conditions the concept of Equality and property in relation to Fundamental Rights has to be modified and amended according to the provisions of Directive Principles Therefore one should keep a balance between facts as we find and the objectives and ideal that we aim at If we stick to the existing facts alone then we become static and unchanging and shall be giving up our objectives and the Directive Principles laid down in the Constitution Thus it is submitted that the Articles of Fundamental Rights should not be interpreted in isolation and courts should not take such a rigid attitude as was taken in the case of Champakam Dorairajan Vs State of Madras that Articles of Fundamental Rights should not even be read alongwith the Articles of Directive Principles and Chapters of Fundamental Rights is sacrosanct and the Directive Principles have to run as subsidiary to Fundamental Rights This attitude of untouchability of some courts is not helpful Now we turn our attention to the question of relative value of fundamental rights and Directive Principle in relation of the abolition of Zamindari and other agrarian reforms and how obstacles were created by the defence of fundamental rights of property in the effective implementation of these programmes Prof K T Shah a member of the Constituent Assembly had anticipated that courts and tribunals may not give due importance to the provisions of Directive Principles and so to leave nobody in doubt he had suggested an amendment in the Constituent Assembly on 15th Nov, 1948 that in clause (1) of Article 1 of the draft Constitution following words "Secular Federal Socialist Union be inserted and the amended article may read

as "India shall be a secular federal, socialist union of States "[48] To explain the merit of this amendment and to emphasise the importance of socialistic aspirations to be included in the Constitution he said in the Constituent Assembly "I am fully aware that it would not be quite a correct description of the state today in India to call it a Socialist Union I am afraid it is anything but Socialist so far But I do not see any reason why we should not insert here an aspiration which I trust many in this House share with me, that if not today soon hereafter the character and composition of the State will change, change so radically, so satisfactorily and effectively that the country would become a truly Socialist Union of States He further said ' By the term 'socialist I may assure my friends here that what is implied or conveyed by this amendment is a state in which equal justice and equal opportunity for everybody is assured, in which every one is expected to contribute by his labour, by his intelligence, and by his work all that he can to the maximum capacity and every one would be assured of getting all that the needs and all that he wants for maintaining a decent civilized standard of existence I am sure this can be achieved without any violation of peaceful and orderly progress

Those who recognise the essential justice in this term those who think with me that socialism is not only the coming order of the day, but is the only order in which justice between man and man can be assured is the only order in which privileges of class exclusiveness property for exploiting elements can be dispensed with must support me in this amendment —— —— If this ideal is accepted I do not see that there is anything objectionable in inserting this epithet or designation or description in this article and calling our Union a Socialist Union of States Dr Ambedkar who was the Chairman of the Drafting Committee acknowledged the fact that much of the socialism has been included in the Directive Principles and therefore there is no need to accept the amendment as suggested by Prof K T Shah, and thought that amendment was superfluous and said 'My Honourable friend Prof Shah does not seem to have taken into account the fact that apart from the Fundamental Rights which we have embodied in the Constitution we have also introduced other sections which deal with directive principles of state policy If my honourable friend were

to read the Articles contained in Part IV he will find that both the Legislature as well as the Executive have been placed by this Constitution under certain definite obligations as to the form of their policy Now to read only Article 31 which deals with this matter It says

The State shall in particular direct its policy towards securing—

(i) that the citizens men and women equally have the right to an adequate means of livelihood
(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good
(iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment
(iv) that there is equal pay for equal work for both men and women

There are some other items more or less in the same strain What I would like to ask Professor Shah is this If these directive principles to which I have drawn attention are not socialistic in their direction and in their content I fail to understand what more socialism can be?

Therefore my submission is that these socialist principles are already embodied in our Constitution and it is unnecessary to accept this amendment [49]

Giving a rejoinder to Dr Ambedkar for not accepting his amendment for the inclusion of words that Bharat shall be a socialist state Prof K T Shah maintained that although socialistic principles have been accepted in the Directive Principles but they will not be getting due importance and hence in turn the socialistic aspirations will also not receive adequate regard and respect from courts and therefore he said in Constituent Assembly

The Directives are in my opinion the vaguest loosest thickest smoke screen that could be drawn against the eyes of the people and may be used to make them believe what the draftsmen never intended or meant perhaps When those matters are brought before the tribunals for adjudication or arbitration they might not be interpreted in the sense the people might believe those

clauses to convey'[50] His anticipated apprehension has been proved correct by the attitude of the Courts regarding the relative values of Directive Principles and Fundamental Rights[51] If the courts had taken a balanced view keeping in mind the importance of Directive Principles in relation to the facts of our history and existing social and economic conditions there would have been no need for the first amendment of the Constitution In opposition to such a rigid attitude of the courts in relation to Directive Principles and Fundamental Rights Pt Nehru had to say in Lok Sabha (14th March 1955) "I would like to draw the attention of the House to something that is not adequately stressed either in Parliament or in the country We stress greatly and argue in courts of law about the Fundamental Rights rightly so but there is such a thing also as directive principles of the constitution Even at the cost of repeating them I wish to read them out (Prime Minister Late Pt Nehru referred at this occasion to Articles 37 38 39 of the constitution) These are as the constitution says the fundamental in the governance of the country Now I should like the House to consider how can you give effect to these principles if the arguments which is often being used even if I may say so with all respect by the Supreme Courts is adhered to? You cant You may say you must accept the Supreme Court s interpretation of the constitutions They are wiser than we are in interpreting things But I say if that is correct there is an inherent contradiction in the constitution between the Fundamental Rights and Directive Principles of the State Policy[52] To set the matter right which arose due to the supreme court s decisions upholding the sanctity of the Fundamental Rights and thereby blocking the path of the desired and expected social and economical reorganization he further said in the same speech "Therefore again it is upto this parliament to remove that contradiction and to make the Fundamental Rights subserve the Directive Principles of State Policy'[53]

The problem of the relative value of the Fundamental Rights and directive Principles recently became a question of great controversy and practical importance as a result of Supreme Court s decision on the Constitutional Validity of the Seventeenth Amendment Act (Golaknath Case) and as a result of this 24th

& 25th amendment Bill have been introduced in the Parliament [4] However the view of the ex Chief Justice Wanchoo and his supporting colleagues of the supreme court were more favourably inclined to the view that for the establishment of a new social order for the implementation of Directive Principles Fundamental Rights may be amended by the Parliament The views of Ex Chief Justice Gajendragadkar were also in favour of amending the Constitution in order to eliminate the opposition of the some Fundamental Rights if need be He expressed his views on this issue in the following words The concept of social justice thus takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities All steps taken by the Indian legislatures with a view to solving this problem of socio-economic inequality are based on the doctrine of social justice Let us never forget that to the large class of citizens who suffer from stark poverty and its inevitable accompaniments notions of individual freedom and liberty are apt to sound as empty words which obtain popular currency only in the drawing rooms of the rich and well to-do classes of citizens for it is plain that hunger makes men impatient and angry, and impatience and anger lead to blindness In their struggle to face the urgent and pitiless problem of poverty citizens may not be able to appreciate the theoretical significance and grandeur of the concept of individual freedom and liberty The concept of social justice is thus a revolutionary concept which gives meaning and significance to the democratic way of life and makes the rule of law dynamic When Indian democracy seeks to meet the challenge of socio economic inequality by its legislative process and with the assistance of the rule of law it virtually seeks to achieve economic justice without any violent conflicts As soon as the ideal of a welfare state is accepted by democracy it leads to one important consequence and that is that the claims of social justice must be treated as paramount and primary and if the freedom of the individual and his individual rights need to be regulated in order to achieve social justice [5] Expressing his views further about the desirability of the amendment of the Consti

tution to achieve socio-economic justice he says "My point in mentioning some of these amendments is to illustrate my thesis that in seeking to achieve socio economic justice democracy and the rule of law cannot treat any proposition as absolute and any provision as infallible and beyond the pale of modification If experience shows that some change has to be made democracy and the rule of law do not hesitate to make the change because it is the very essence of sociological jurisprudence that like life law itself must benefit by experience "[58] Justice G jendragadkar thus is of opinion that claims of social justice may require that the freedom of the individual and his individual rights may be regulated in order to achieve social justice This means that the Fundamental Rights should be regulated in the interest of social and economic justice Secondly he also holds the view that the *Constitution including Fundamental Rights may be suitably* amended

Thus in this chapter it has been discussed that how and why the problem of conflict between some Fundamental Rights and Directive Principles arose and how and why courts took a rigid attitude and sought to establish a perpetual principle for the interpretation regarding relative values of these two chapters ? It has also been pointed out that what were the reaction of Pt Nehru as leader of the majority party and National leader to such decisions and his explanation why these amendment were done ? It has also been proved in this chapter that our constitution is socialistic in aspirations and much of there socialistic aspirations have been included in the Directive Principles Dr Ambedkar gave an assurance on the floor of the House of the Constituent Assembly that Directive Principles contain socialistic aspirations and they can not be ignored They are the means to establish expected and promised conditions of the social and economic justice and general welfare of the masses It has also been pointed out in this chapter that if the amendment of Prof K T Shah to include words ' Socialistic State was accepted no ambiguity would have remained about the true spirit of of our Constitution and Directive Principles His apprehension that in future courts may not give Directive Principles due consideration has also proved correct It has also been emphasized

in this chapter that for removing already existing inequalities as a consequence of our history too much emphasis on legal equality is not warranted and if the preexisting inequalities are to be removed special concessions have to be given to the weaker sections of the community that is the relevant Articles of the Directive Principles will have to be taken in to consideration while interpreting the Constitution in general and Fundamental Rights in particular Assessing the over all situation it is felt that for the interpretation of the Constitution a balanced view should be taken keeping many factors in mind and the superiority of the Fundamental Rights should not be upheld rigidly in isolation without due regard to other provisions of the constitution and due weightage should be given to the actual facts of social life historical background and its consequences and if need be the proceedings of the constituent assembly may be referred to find out the views of the framers of the constitution



3 Historical background of the aims and aspirations of the Indian Constitution

It has been pointed out earlier that the evaluation of a Constitution and its institutions should be done in relation to the historical background In this Chapter it is proposed to study the historical background of the aims and aspirations of the Indian Constitution Late Pt Jawahar Lal Nehru was one of the chief architects and guiding spirit of our Constitution His impact on Indian Constitution has been very great both in its formative[57] as well as operative phase [58] He set the Constitution on right direction It was he who had the privilege of introducing the Objectives Resolution in the Constituent Assembly which formed the backbone of our Constitution [59] The Objectives Resolution is the yardstick by which the true evaluation of the letter and spirit of our Constitution is to be done It is therefore quite natural to enquire how this great leader felt about the problems of Indian masses? What were his dreams and expectations of a free India? How he thought the problem of the masses could be solved? He had no doubt some differences with Mahatma Gandhi on some issues yet he was accepted his political heir Gandhiji knew that Jawaharlalji was the man of future As early as 1929 Gandhiji said about Pt Nehru 'In bravery he (Nehru) is not to be surpassed Who can excel him in the love of the country? He is pure as crystal he is truthful beyond suspicion He is a knight sans peur et sans reproche The nation is safe in his hands [60] Most appealing was Pt Nehru s enormous capacity for constructive work his sustained will power and drive his ability to conceive of concrete long range plans for the future development of this greatly underdeveloped and greatly oppressed country Through his continuous efforts he created a *place for* socialistic ideology in the Congress Organization and India He had many strong opponents on the issue of socialism in the Congress itself but the important point is how through his sustained efforts he won the opposition and made them agree to his views It is but natural that this great leader who was the guiding spirit of our Constitution must have incorporated in it his ideals of

socialism, that is it was impossible for him to associate himself with any Constitution which was not in harmony with his socialistic ideals He consistently felt compassion for the poor and the oppressed and fought against all sort of injustices-Political Economic or social in the country and even on the International plane His speeches in Lok Sabha at the time of the consideration of amendments of Article 31 (Ist and Fourth Constitutional Amendment Bills) his passionate zeal for bringing about a new social order through Directive Principles of State Policy, his anger for those who sought to block the programme of socio economic reorganization under the cover of political guarantees of some Fundamental Rights can be better appreciated and understood in the context of this background Now we will trace the influence of socialism on Pt Nehru and in turn his influence on our Constitution through a short historical study of the evolution of the ideals and aspirations of our freedom struggle and how the problems facing the country were planned to be solved? The Constitution is after all an apparatus an instrument to realize the dreams and hopes and expectations of the people The defenders of the sanctity of property rights and such other related subjects would have appreciated the real value of Directive Principles if they had kept in mind the picture of free India which was drawn during freedom struggle and the views of Pt Nehru which he held even so much earlier His views on vital issues such as property rights nationalization of the key industries and services and means of production of wealth economic justice and equality agrarian reforms including abolition of Zamindari and other means through which the emancipation of the oppressed masses could be brought about have followed a continuous pattern If the historical background of our freedom struggle is ignored one cannot realize the importance of socialistic principles of our Constitution If the socialistic elements of the Indian Constitution are ignored one mises the real spirit of the Constitution Despite his early attraction to Marxism as a possible cure for India s economic ills at no time did Pt Nehru favour communism as an ideal form of Government for India because he was basically opposed to any sort of regimentation It was after all the human aspect of socialism that aroused his enthusiasm He had no

interest whatsoever in fixed doctrinaire approach or the inevitability of a bloody revolution in order to bring about the needed social and economic emancipation to be realized because he had faith in the progressive democratic socialism

These views of Pt Nehru that peace and stability of a community and the State depends on the equal distribution of property have also been supported by other eminent political writers and thinkers e g Madison wrote "The most common and durable source of factions has been the various and unequal distribution of property Those who hold and those who are without property have ever formed distinct interest in society "[61] Prof Harold Laski also supporting such views writes "It remains historically obvious that a community divided in to rich and poor is, when the latter are numerous, built upon the foundations of sand [64] If attempts to equalize economic power are frustrated under whatever rights there will be a constant friction between the rich and poor the 'haves and 'haves not and these will produce a serious threat to the very existence of the State In such circumstances Pt Nehru rightly warned that 'no single Fundamental Right can survive any grave danger to the state——— We have een the most perfect of constitutions upset not because they lacked perfection but because they lacked reality because they failed to deal with the real problems of the day "[63] Commenting on the need of new adju tments Pt Nehru further said "But I would like to put it to them and to others that their security ultimately lies in a stable economic system and not in the law courts or in anything else If there is no peace between them and the vast agrarian population, they have no security That system cannot continue it does not matter what your Fundamental Rights might say what your Constitution might say or what your courts might say if you refuse to see beyond these you will arrive at a revolutionary situation which will ignore all these things We have to consider the reality and read just ourselves put an end to the big zamindari system, reform our land system make it progressive and modernize it [64] Thus he advised capitalists and Zamindar class to adapt themselves to new circumstances of fundamental rights

The above quoted view of Pt Nehru and the abstracts and

speeches which are to follow in this chapter will give an inside view of those issues for which the Nation fought for independence and the ideals for the achievement of which the Indian Constitution was really framed and will create a better understanding of the relative importance of Directive Principles Whatever has been included in the Directive Principles has been commented upon and elaborated by Pt Nehru in his speeches and writings before and after independence He emphatically maintained his disfavour of capitalistic society and concentration of economic power in private hands He was in favour of abolition of Zamindari and other intermediaries on land and was in favour of creating new conditions for economic and social justice for better deal to labour and other working classes for creating humane conditions of work compulsory primary education at state expense special treatment for the benefit of women and children and backward sections of the community the promotion of health and the standards of nutrition to secure a decent standard of life [6] He emphasized that the struggle and conflict between nations and between people of the same country was due to capitalistic and acquisitive tendencies If the progress of Directive Principles is sought to be blocked by some Fundamental Rights the entire edifice created in the form of hopes and expectation of a free India will collapse If the provisions of Directive Principles are not realized it will not be an exaggeration to say that the entire process of history and background of our freedom struggle will be stultified and the whole process will become abortive and purposeless

Pt Nehru s attachment to socialism started during his student career at Cambridge and throughout his life this attachment continued and he always emphasized that political independence has meaningful significance if it leads to social and economic independence According to him Congress was a bourgeoise organisation in its early phase and was cut off from the masses and worked for the benefit of the upper class only such as Indian industrialists and budding capitalists and English educated Indians who wanted more and more concessions and Indianization of the Services The Congress came in the contact of masses

after the advent of Gandhiji and under his influence and guidance the congress organization and its workers including Pt Nehru gradually moved towards the masses "Just then a new interest developed in my life which was to play an important part in later year I was thrown into contact with the peasantry I got entangled in the Kisan movement That entanglement grew in later years and influenced my mental outlook greatly A new picture of India seemed to rise before me naked starving crushed and utterly miserable And their faith filled me with a new responsibility that frightened me I listened to their innumerable tails of sorrow their crushing and ever growing burden of rent illegal exactions ejectments from the lands and mudhuts surrounded on all sides by vultures who preyed on them Jamindar s agents money lender Police they toiling all day to find what produced was not their s and their reward was kicks and curses and a hungry stomach the progressive pauperization of peasantry had been going for a long time what amazed me was our total ignorance in the cities of this agrarian movement, I realized more than ever how cut off we were from our people and how we lived and worked and agitated in a little world apart from them

This realization came to me during these Partapgarh visits and ever since then my mental picture of India always contains this naked hungry mass '86 This picture of abject and grinding poverty of Kisans and labourers working on the land created a great hatred in the mind of this leader for this system which produced this misery—the *Zamindari* system How much hurt he must have felt when the process of *Zamindari* abolition and the steps to give land to the tiller were sought to be blocked through the interpretation of some Articles of Fundamental Rights by the courts ?

He became convinced that to alleviate *the sufferings of the* Kisans and labourers Zamindari system must be abolished Pt Nehru s further interest in socialism is traced through the following abstracts we even tried as early as 1926 to draw up a mild socialist programme We declared that the existing land system must go and that there should be no intermediaries between the States and the cultivators I wanted to spread the ideology of

socialism specially among congress workers and the intelligentia for these people who were the backbone of the national movement thought largely in terms of narrowest nationalism [67]

Commenting upon the state of society of India then and what are the duties of the State (He ofcourse expected the Indian State to do all these things after Independence) he said "Today we see a society in which there are tremendous differences between man and man great riches on one side and great poverty on the other Some people live in luxury without doing any work whilst others work from morning till night with no rest or leisure and yet have not got the barest necessities of life This cannot be right It is the negation of Justice It is not the fault of our individuals who happen to be rich It is the fault of the system and it is upto us to change this system which permits of exploitation of man by man and produces so much misery .. Every man and woman must have the opportunity to develop to the best of his or her ability Honour and merit must come from ability and hard work and not because of caste or birth or riches but treated as equal with equal rights to share this country and all it produces There is very little education very little sanitation or medical facilities In other countries it is the bounden and first duty of the state to give free education to every person free medical facilities and to build good houses for the poor In other countries it is felt that no nation can be strong unless its men and women are healthy and well educated we must put an end to this the future of India lies with peasantry [68]

In the same strain Pt Nehru emphasized in his Presidential Address Pujab Provincial Conference April 11 1928 ' We must also be opposed to capitalism as a system and to the domination of one country over another The only alternative that is offered to us is some form of socialism that is the State ownership of the means of production and distribution We cannot escape the choice and if we really care of a better order of society and for ending the exploitation of man by man we cannot but cast our weight on the side of socialism we may demand freedom for our country on many grounds Ultimately it is the economic problem that mattess whenever vital questions affecting

masses have arisen they have been shelved why confuse the issues now ? It has been said we can settle our problems later Like all class conscious groups they have considered themselves the most vital element in the nation and in the name of freedom have *really sought to advance their own interests* what shall it profit the masses of this country—the peasantry the landless labourers the worker if every one of the offices held by Englishman in India is held by Indians Mass support cannot come for the vague idea of Swaraj Therefore it is essentail that we must clearly lay down an economic programme must have an ultimate ideal in view Our ideal thus can only be an independent democratic state and I would add a socialistic state and for this we must work [69]

In a speech at all Bengal Student s Conference Calcutta Sept 22 1928 Pt Nehru further elaborated his ideals in the following words ' You cannot have a purely political ideal for politics is after all only a small part of life Your ideal must be a complete whole and must comprise life as it is today economic social as well as political Can you expect any peace in the land when there is so much misery and so much contrast between wealth and adject poverty ? We are sometimes told that we must see that justice is done between landlord and tenant and capitalists and worker and justice means the maintenance of the statusquo It is a kind of justice the League of Nations gives when it maintains the present statusquo with the imperialist powers dominating and exploiting half the earth when the statusquo itself is rank injustice there who desire to maintain it must be considered as upholders of that injustice If your ideal is to be one of social equality then perforce you must work for a socialistic state The word socialism frightens many people in this country, but that matters little for fear is their constant companion our elders sitting in their council chambers shake their grey heads and stroke their beards in alarm at the mere mention of the word [70]

Making a declaration that in future things will have to be changed, that people will get living wages and the future government of independent India will strive to bring about a change in social and economic order to end the sufferings of masses he futher said ' It will not profit you much if there is change in your

masters and your miseries continue You want a living wage and not a dying wage You want to prevent exploitation of man and to ensure equal opportunities and fair conditions of living for all It is certain that this cannot be done under the existing system [71]

By the year 1929 Pt Nehru had established independence League the aims of which were A Social Democratic State and State Control of the means of production and distribution steeply graduated income and inheritence taxes universal free and compulsory primary education adult suffrage a minimum living wage excess profit taxes support for trade unions unemployment insurance an eight hour work day abolition of untouchability equal status for sexes and far reaching land reforms removal of intermediaries etc[7] This in short chalked out a programme for the state of free India to implement and much of the Directive Principles is constituted of these aims declared as back as 1929 These constitute the programme of the Rights to be given by the State Those rights which State of free India could give immediately were put in the category of Fundamental Rights such as untouchability equality of sexes etc and which state could not give and aimed to provide in future depending on the availability on the resources were put under Directive Principles

It is a fact that some leaders in the Congress were against socialistic principles being incorporated and in the programme of National movement but the important point is that inspite of their opposition Congress was gradually drifting towards socialism and the crucial election of Pt Nehru as President of Lahore Congress Session in 1929 aids great controversy on the clear support of Gandhiji proves that Pt Nehru s views and ideology was gaining greater support His privilege to introduce in the Constituent Assembly the Objectives Resolutions which formed the backbone of the Indian Constitution further proves that his opponents ultimately acquised to his views bacause they found themselves in minority The Objectives Resolution was passed unanimously by the Constituent Assembly [73] The triumphant spirit was that of Pt Nehru and his creed of socialism which took the shape of words in the lines of our Preamble

where there is a clear expression of the Ideals of economic and social justice, and later on at Avadi and Bhuneshwar sessions congress accepted without any ambiguity the principles of socialist pattern of society

Championing the cause of the poor masses in his Presidential address before Lahore Congress Session 1929 Shri Nehru elaborated his ideas about socialism and the problems of the country further in the following words No solution was found for the problems of equality India deliberately ignored this and built up her social structure on inequality and we have the tragic consequences of this in the millions of our people who till yesterday were suppressed and had little opportunity for growth And so today politics has ceased to have much meaning and the most vital question is that of social and economic equality India will also have to find a solution to this problem, and until she does so her political and social srtucture cannot have stability I must frankly confess that I am a socialist and a republican and am no believer in kings and princes or in the order which produces the modern kings of industry The interests of Indian capital and the owners of big Zamindaris are ever thrust before us and they clamour for protection The unhappy millions who really need protection are almost voiceless and have few advocates I recognise however that it may not be possible for a body constituted as is this National Congress and in the present circumstances of the country to adopt a full socialistic programme But we must realise that the philosophy of socialism has gradually permeated the entire structure of society the only point in dispute is the pace and method of advance to its full realization India will have to go that way too if she seeks to end her poverty and inequality for India means the peasantry and labour and to the extent that we raise them and satisfy their wants will succeed in our task We can only gain them to our side by our espousing their cause The congress it is said must hold the balance fairly between capital and labour and jamindar and tenants But the balance has been and is terribly weighted on one side to maintain injustice and exploitation The All India Congress Committee accepted this ideal of social and economic change in a resolution it passed some months ago in Bombay I hope the

congress will also set its seal on it In this programme perhaps the congress as a whole cannot go very far today But it must keep the ultimate ideal in view and work for it We have to decide for whose benefit industry must be run and the land produce food Our economic programme must therefore be based on a human outlook and must not sacrifice man to Money If an industry cannot be run without starving its workers then the industry must close down If the workers on the land have not enough to eat then the intermediaries who deprive them of their full share must go The least that every worker in field or factory is entitled to is a minimum wage which will enable him to live in moderate comfort and human hours of labour which do not break his strength and spirit All these are pious hopes till we gain power [74]

Thus Shri Nehru seems to be giving a pledge to bring about all these desired changes when India becomes free The purpose and aim of our constitution and specially of Directive Principles should be viewed in the context and background of such expressed sentiments and promises Any one who keeps these things in mind will not say that the programme of abolition of Zamindary system taking over of mills Banks factories in the interest of labour and similar other welfare programmes which try to end exploiting classes is playing a fraud on the Indian Constitution No body was left in doubt about the programme of the Government and state of free India

Elaborating his ideas about the importance of working classes and Kishan Pt Nehru further said We cannot escape having to answer the question now or later for the freedom of which class or classes in India are we specially striving? Do we place the masses the peasantry and workers first or some other small class at the head of our list? essentially whom do we stand for and when a conflict arises whose side must we take? To say that we shall not answer that question now is itself an answer and taking of sides for it means that we stand by the existing order the statusquo The form of Government is after all a means to an end even freedom itself is a means the end being human well being human growth the ending of poverty and suffering [75] All this foretells about the aims of the future Constitution of India

and the contents of the Constitution of free India should be under stood and interpreated in the context of such expressions The conflict of statusquo maintaining fundamental rights and dyna mic Directive Principles should also be understood and appre ciated in this context

In 1934 even after his resignation from the Congress Gandhiji continued to favour Pt Nehru as its "rightful helmsman In September, 1934 he wrote to Sardar Patel ' I miss at this juncture (association and advice of Jawaharlal who is bound to be the r ightful helmsman of the organization in the near future He is courage personified He has an indomitable faith in his mission [76] Inspite of Gandhiji s support Pt Nehru experienced opposition from some of the old guards of the congress organiza tion on the issue of socialism and economic policies and other reforms This point is being stressed because when the ques tion of acquisition of the property and abolition of estates was dis- cussed in relation to compensation and agrarian reforms there appeared serious differences between the outlook of conservative elements and socialistic elements of the congress organization in Constituent Assembly One group was in favour of giving com pensation at market value plus 15% solatium while the other group led by Pt Nehru was not in favour of giving compensation to that extent and eventually a compromise formula was evolved according to which the question of compensation was decided in such a way that the state on acquiring property will give compen sation according to law and the quantum of the compensation will be decided by the legislature These points have a direct bear ing on the issues of Fundamental Rights and Directive Principles and the various amendments of the Constitution to implement Directive Principles Inspite of his keen differences with some of the old guards of the organization who were also members of the working committee Pt Nehru went on holding triumphantly to the ideals of socialism In his presidential address at Lucknow Congress (1937) he further advocated his views about the problems of India and their solution and the shape of things to come in free India and said I am convinced that the only key to the solution of the world s problem and of India s problem lies in socialism I see no way of ending the poverty the vast unemployment deg

radiation of the Indian people except through socialism That involves vast and revolutionary changes in our political and social structure the ending of vested interests in land and industry that means the ending of private property except in a restricted sense and the replacement of the present system in short it means a new civilization radically different from the present capitalist order Socialism is thus for me not merely an economic doctrine *it is a vital creed* which I hold with all my head and heart [77]

As a corollary of socialistic principles which Pt Nehru enunciated a planned development of economy is necessary Commenting on this point Dorothy Norman in her famous biography of Pt Nehru writes Just as Nehru had exerted the most important influence in Congress and in the country at large in making India aware of both international issues and the need for a Constituent Assembly so he was the first and most forceful exponent in the country of national planning Even before 1938 he felt strongly that a National Planning Committee should be created When he urged that such a committee be formally appointed in 1938 and the Congress approved his suggestion he was asked to be its chairman Later as Prime Minister he was to play a decisive role in helping to formulate inaugurate and implement free India s several Five Year Plans [8]

The very essence of the planning is a large measure of regulation and cordination The general principle governing National Policy were laid down Agricultural land mines quarries rivers and forests are forms of national wealth ownership of *which must vest absolutely in the people of India collectively* The co-operative principle should be applied to the exploitation of land by developing collective and co operative farms No *intermediaries of the type of Taluqdars Zamindars etc* should be recognized after the transition period was over the system of credit *should be socialized* *Thus through* the consideration of special problem we gradually developed our social objectives and policy

We could not then plan for socialism as such Yet it became clear to me that our plan as it developed was inevitably leading us towards establishing some of the Fundamentals of the socialistic structure Planning though inevitably bringing about a

great deal of control and co ordination and interfering in some measures with individual freedom would as a matter of fact in the context of India today lead to a vast increase in freedom '[79]
Thus we note that the shape of independent India was already visualized and framed before independence and the ideals of the constitution were well established It meant the establishment of socialistic type of state where the interests of few will not be allowed to block the interest of the masses The framing of Indian Constitution was done to bring about these desired changes and the written Constitution is only a culmination of the political thoughts expressed so far and is the crystallized and physical form of those ideals The contents of various Articles of the Constitution should be understood in continuation of this historical evolution of the process of freedom and not in isolation The roots of Indian Constitution are fixed in this background Enough material has been now provided in this chapter, even with the help of long abstracts and quotations for the right understanding of the aims ideals and aspirations of our Constitution and its historical background Whatever Rights could be given immediately, were put in the chapter Fundamental Rights and were made justiciable and those which could not be given immediately, were put in the Chapter of Directive Principles to be provided in future depending on the availability of the resources of the State and the circumstances of the community The Directive Principles were thus the Rights towards which the state has to strive because in pre independence days a pledge was given to achieve them We have also noted that Pt Nehru had more emphasis on economic and social rights and considered political rights as worth while only so far they contributed to the realization of the former Mostly political rights have been included in Chapter III and economic rights, in the Directive Principles If the Indian Constitution has been framed to realize these economic rights in ultimate analysis their importance is greater If the political rights of few block the progress of economic and social rights the former have to be amended This exactly was meant when Pt Nehru in Loksabha maintained during the debate on the Fourth Constitution Amendment Bill that 'It is upto this Parliament to make the Fundamental Rights subserve the Directive Principle of State Policy, [80] i e to

make political rights subserve economic and social rights Anybody who has the knowledge of our freedom struggle and its real aims and aspirations will realize that this stand was not a new one for Pt Nehru He had been constantly maintaining it and we have traced his views through a considerable long period to leave nobody in doubt The emphasis on economic rights is a product of socialistic creed because believers of socialism think that mere political rights are not enough and western democracies which put so much emphasis on only political rights are not perfect models Stalin, said What can be the personal freedom of an unemployed person who goes hungry and finds no use for his toil? Only where exploitation is annihilated where there is no oppression *of some by others no unemployment, no beggary and no* trembling for fear that a man on the morrow lose his work his habitation his bread only there is true freedom [81] Many Fundamental Rights enumerated in the Soviet Constitution have been included in our Directive Principles such as right to employment and work right to rest and leisure right to maintenance during old age sickness disability right to education etc Our Directive Principles aim to translate the ideals of these rights into prac*tice depending upon the economic capacity of the State Thus we* note that many provisions of our Directive Principles are just precursors of the Fundamental Rights It is a great irony that similar points of Indian and Soviet Constitutions are not emphasized and more emphasis is laid on the similarities between the Constitution of U S A and India

We now finally come to the stage of the Constituent Assembly of India and the Objectives Resolution which was moved in the Constituent Assembly This resolution is a key to the understanding of our Constitution and it clears many doubts about its true nature Its Article (V)2 is most important which in substance forms the Preamble of Our Constitution This resolution spells the Objectives for which the Constitution of India was to be *framed and it provided guideline to the Constituent Assembly for* framing the Constitution This point was emphasized by Pt Nehru himself in the following words But even now, at this stage it is surely desirable that we should give some indication to ourselves to those who look to this Assembly as to what we

may do what we seek to achieve, whither we are going It is with this purpose that I have placed this Resolution before this House [82] Explaining the importance of the 'Objectives Resolution Pt Nehru said in the Constituent Assembly Dec, 13 1946 that it is not a mere resolution, it is something much more then a resolution "It is a Declaration It is a firm resolve It is a pledge and an undertaking and it is for all of us I hope a dedication, and appealing to the House he said "I wish that this House if I may say so respectfully should consider this Resolution not in a spirit of narrow legal wording but rather look at the spirit behind the Resolution [83] Here he appears to be saying to the p ople and the future interpreterers of the Constitution not to miss the real spirit of the Constitution on the basis of narrow legalism If courts and defenders of the vested interests were to heed to this appeal they would have construed the meaning of the Articles in this sense and kept the real spirit of the Constitution in mind there would have been no controversy regarding the relative value of Fundamental Rights and Directive Principles and there would have been no need to amend the constitution for the implementation of the Directive Principles Commenting on the Objectives Resolution he further said in same speech "It seeks very feebly to tell the world what we have thought or dreamt so long and what we now hope to achieve in the near future It is in that spirit which I venture to place this Resolution before the House and it is in that spirit I trust the House will receive it [84] He seems to be emphasizing here that the framing of the Constitution should be done in keeping with this historical background ideas and sentiments so far expressed and its interpretation should also be done in the same historical perspective He further said that this resolution prescribes the fundamental Principles of the draft Constitution This Resolution therefore lays down certain Fundametals which I do believe no party or group and hardly any individual in India can dispute [85] Explaining further that why words Socialist State have not been used in this Resolution Pt Nehru said 'We have done something much more than using the word We have given not only the content of democracy but the content if I may say so of economic democracy in this Resolution [86]

He explained that the use of word 'Socialist State' has been deleted not because he did not want to use it or he had deviated from his earlier views but because a few people might have objected to its use and he wanted this Resolution to be passed unanimously and without debate. "Others might take objection to this resolution on the ground that we have not said that it should be a socialistic state. Well I stand for socialism and I hope India will stand for socialism and that India will go towards the Constitution of a Socialist State .... But main thing is that in such a Resolution if according to my desire I had put that we wanted a socialist state we would have put something which might be agreeable to many and might not be agreeable to some and we wanted this Resolution not to be controversial. Therefore we have laid down not theoratical words and formulas but rather the content of the things we desire. This is important and I take it there can be no dispute about it."[7] Thus we note that he (Shri Nehru) is categorically expressing that we stand for a Constitution which is fundamentally socialistic in aspiration which should incorporate the ideals of economic democracy. Without actually using the word 'Socialist state' he wanted Indian Constitution to be socialistic in spirit. Although he agreed that Constituent Assembly was free to make any type of Constitution but after the acceptance of Objectives Resolution it could not frame legally and morally any Constitution which was not inconsonance with the sentiments of economic and social justice as expressed in the Objectives Resolution. "This Constituent Assembly may do that it may undertake only in one ... if you like it limits our work. If you call that limitation that is we adhere to certain fundamental propositions which are laid down in this declaration ...... No body challenges them in India and no body ought to challenge them but if any body should challenge them well we shall accept the challenge."[8] A constitution framed on such expressed categorical understanding cannot but be socialist in aspiration. To interpret such a constitution in isolation without regard to these facts for the defence of the vested interest in property and zamindari etc. on the basis of the ideals of the Constitution of U.S.A. cannot be justified. Such wrong understanding has to be corrected. If the Constitution is understood and interpreted

in this background of economic democracy and socialist aspiration the sanctity of property rights, compensation etc would not have mattered much and Constitution would not have been interpreted so as to cause apparent disharmony between its two chapters This point was emphasized in the Constituent Assembly by Prof K T Shah when he wanted words Socialistic State in the Constitution [89] Explaining his point he said ' I have one more word to add As I said at the very beginning this is not merely an addition or amendment to correct legal technicality or make a factual change but an aspiration and also a description of present facts There are the words "Shall be in the draft itself I therefore take my stand on the term "shall be , and read in them a promise and hope which I wish to amplify and definitise I trust the majority, if not all the members of this House will share with me ' [90] Dr Ambedkar assured the House and Prof K T Shah that the Socialistic Principles and aspiration have been already included in the Directive Principles and hence there is no need for that amendment ' What I would like to ask Professor Shah is this If these directive principles to which I have drawn attention are not socialistic in their direction and in their content, I fail to understand what more socialism can be ' [91]

Thus it is clear that even in the view of Dr Ambedkar, socialist principles have been included in the Constitution through Directive Principles It has been traced through long history of freedom struggle that socialistic elements cannot be ignored because it has been one of the prominent and major question for our freedom fighters If any attempt is made to decrease the due value of Directive Principles meant for the realization of pledged economic and social circumstances it will be going against the direction of the evolution of our political philosophy and history If this cardinal fact is kept in mind doubts about the real significance and relative value of Directive Principles will disappear

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4 Background and Sources of 'Rights' in the Indian Constitution

In the famous case of Srimati Champakam Dorirajan Vs The State of Madras and C R Srinivasan and The State of Madras Supreme Court of India declared unanimously that The Chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or order, except to the extent provided in the appropriate Article in Part III The Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights [92] This declaration clearly means to hold that the rights of Chapter III of our Constitution are of superior value than those of Chapter IVth The main reason for such a view is that the rights of Chapter III are judicially enforceable and while those of Chapter IV are not enforceable by the Courts Thus the point of enforcement by the courts is considered to be the main reason for assigning superior value to that chapter but the reasons and motives for making those rights (of Fundamental Rights Chapter) enforceable and those of Chapter IV (of Directive Principles) not enforceable by the courts have been ignored It is the established Principle of Interpretation of contracts treaties and other documents either of International Law or of Municipal Law that for ascertaining the real scope of these documents the motives and the circumstances leading to their formation may also be referred to There has been much controversy about the relative value of the chapter of Fundamental Rights and Directive Principles hence it is worth while to enquire, what were the circumstances motives reasons leading to the acceptance of the principle that one set of rights be made enforceable by the courts and that of the other not so ? It has been pointed out in the previous chapter that whatever rights State could provide immediately after the enforcement of the constitution have been included in the part III of the constitution e g right of equality before law right of equal access to shops public restaurants hotels and places of public entertainment use of wells tanks bathing ghats etc and which state could not provide immediately but which State wanted to make

unable to secure these circumstances the State may not be sued in the courts This was the basis of division and categorisation of rights in the Indian Constitution and whether these rights are included in Chapter III or Chapter IV they both are rights and *constitutional rights because the provisions of Directive Principles* are as much part of the Constitution as are Fundamental Rights because they too have been put in the Ar i le of the Constitution The enforcement of one set of rights and not of the other by the courts was provided on the basis of expediency and practical con sideration and not on the basis that those made enforceable by the courts were meant to enjoy any supremacy or higher status If the state were in a position to provide all those rights which have been included in the Directive Principles it would have made them jus ticiable right from the beginning but actually the state was not in such a position when the Constitution became operative and there fore to save the state from the embarrassment and the consequen ces of judicial actions it has been pr vided in the Constitution that some of these rights are not justiciable Yet the simple classifica tion based on expediency has been understood to mean that those made justiciable have a distinctly superior status over those which are not justiciable

Our freedom fighters political leaders and the makers of the Constitution never visualized that such a situation will ever arise as has arisen due to the stiff and rigid attitude of the courts as is evidenced by the decisions of the courts in a number of cases in which courts upheld the superiority of the articles of Fundamental Rights over those of Directive Principles including in the decision of the Supreme Court of India on the Seventeenth Amendment Act Let it be enquired that what has been the overall back ground of our rights and what has been the scheme on which our rights have been based and why were they classified ?

Commenting on the general nature of the rights O P Agarwal writes

' From an analysis of the Fundamental Rights included in the Constitutional documents of the different countries we notice that the makers of the different Constitutions have generally recognised a distinction between two broad classes of rights

There are certain rights which require positive action by the state and which can be guaranteed only so far as such action is practicable, while others require that the state shall abstain from interference or prejudicial action. The first category of rights are those which merely require the state in the language of Irish Constitution to direct its policy towards securing that the citizens may, through their occupations find the means of making reasonable provision for their domestic needs. As an example of the first variety, we may take the right to work which it is not practicable for the State to guarantee to each individual citizen. A typical example of the second variety is the right which requires, in the language of the American Constitution that the State shall not deprive any citizen of his liberty without due process of law. Some Constitutions have mentioned both classes of rights under the head of fundamental rights e g the Soviet Constitution and the Weimar Constitution of Germany. The distinction is however clearly recognised in Irish Constitution which deals with Fundamental Right strictly so called and then with Directive Principles of Social Policy being exclusively excluded from the purview of the courts. 90

From this we derive that in many countries Fundamental Rights have been put in two categories one enforceable legally and others not but both sets of categories of rights are Fundamental Rights the non enforceable Fundamental Rights have been included in the Irish Constitution under Directive Principles of Social Policy while in the Russian Constitution there is no such distinction. The rights enumerated in Directive Principles are also part of fundamental rights.

The important point which is to be noted here is that firstly, it is to be recognised beyond any doubts that two sets of rights are fundamental rights they are the branches of the same stock and for practical considerations only one has been made legally enforceable and other not. This simply is the matter, and there is no attachment of any special status to one branch of rights. We have borrowed the scheme of classification of rights from the Irish Cons

titution Much of the confusion about our Directive Principles, will vanish if it is acknowledged that they are part of Fundamental Rights and not something else both are the species of the same genus and only for practical considerations they have been put into two separate chapters or parts In fact no such confusion would have arisen if it were mentioned in our Constitution that the rights in both are Fundamental Rights and one set of them is enforceable and others not or both should have been included in the same chapter with the Title the Fundamental Rights with two parts one dealing with justiciable and other with non justiciable rights However if we look into the scheme which produced this classification, that is the intentions of the framers of Irish Constitution of framers our constitution and the proceedings of the Indian Constituent Assembly we can conclude that practically the same was meant to be done and same principle has been accepted i e the rights of the chapter IIIrd are justicible and those of Chapter IVth non justiciable In short the essence of the argument is (under discussion) that in the Indian Constitution rights have been dispersed in two chapters under the compulsion of practical necessity

Our rights whether included in the Chapter III or IVth emanate from the resolution on fundamental rights accepted at the Karachi session of all India Congress Committee 1931 and the objectives resolution introduced by late Pt Nehru in the constituent Assembly on December 13 1946 At the time of the adoption of the Resolution on Fundamental Rights and Economic Policies a promise was given by the Congress that any constitution agreed upon on behalf of the congress shall provide these rights The text of that famous resolution is being reproduced below —

This Congress is of (the) opinion that to enable the masses to appreciate what Swaraj as conceived by the Congress, will mean to them it is desirable to state the position of the Congress in a manner easily understood by them In order to end the exploitation of the masses political freedom must include real economic freedom of the starving millions The congress threfore declares that any constitution which may be agreed to on its behalf should provide or enable the Swaraj Government to provide for the following

FUNDAMENTAL RIGHTS AND DUTIES

1 (i) Every Citizen of India has the right of free expression of opinion, the right of free association and combination, and the right to assemble peacefully and without arms for purposes not opposed to law or morality

(ii) Every citizen shall enjoy freedom of conscience and the right freely to profess and practise his religion subject to public order and morality

(iii) The culture language and script of the Minorities and of the different linguistic areas shall be protected

(iv) All citizens are equal before the law irrespective of religion caste creed or sex

(v) No disability attaches to any citizen by reason of his or her religion, caste creed or sex in regard to public employment office of power or honour and in the exercise of any trade or calling

(vi) All citizens have equal rights and duties in regard to wells tanks roads schools and places of public resort maintained out of State or local funds or dedicated by private persons for the use of the general public

(vii) Every citizen has the right to keep and bear arms in accordance with regulations and reservation made in that behalf

(viii) No person shall be deprived of his liberty nor shall his dwelling or property be entered sequestered or confiscated save in accordance with law

(ix) The State shall observe neutrality in regard to all religions

(x) The franchise shall be on the basis of universal adult suffrage

(xi) The State shall provide for free and compulsory primary education

(xii) The State shall confer no titles

(xiii) There shall be no capital punishment

(xiv) Every citizen is free to move throughout India and to stay and settle in any part thereof, to acquire property and to

pendence because the nationalist in me cannot tolerate alien domination, I work for it even more because for me it is the inevitable step to social and economic change [99] In the Preamle of resolution on Fundamental Rights, more emphasis has been laid on economic policies ' In order to end the exploitation of the masses political freedom must include real economic freedom of the starving millions [100] In order to end the exploitation, conditions of real economic freedom of masses is essential This resolution on fundamental rights and Economic policy was greatly supported by Pt Nehru "I spoke on other resolutions too including one on Fundamental Rights and economic policy it represented a new outlook in the Congress In the Karachi resolution Congress took step in the socialist direction by advocating Nationalisation of key Industries and services and various other measures to lessen the burden on the poor and increase it on the rich [101] The emphasis on the economic policies and desire and pledge for the economic upliftment of the millions was the goal of the aceptance of this Resolution This resolution is the important source of rights of our Constitution and hence broadly it can be acccepted that our constitution and rights incorporated in it are for fulfilling these aims The rights of economic nature of the interest and welfare of the poorer sections of the community Kisans and Mazdoor (labour class) have been mostly included in the Directive Principles How can then the Directive Principles through which economic rights and hopes of the struggle movement are sought to be realised can be of any less relative value? Further Congress accepted this resolution on Fundamental rights in conjunction with certain economic policies The full title of this Resolution is "Resolution on Fundamental Rights and Economic policy Thus in this title Fundamental Rights have been bracketed with Economic policies It is therefore clear that even as early as 1931 it was emphatically held and made clear that whatever set of fundamental rights is accepted or will be accepted in future they shall be associated with a particular type of economic and social policy which is to be based on the abolition of Zamindari exploitation of all kinds and nationalisation of key industries and services, real economic freedom for the poors, that is even in 1931 it was made

clear that no concept of fundamental rights is acceptable to Congress or shall be acceptable to it in future, if it is not associated with some accepted principles of economic and social policies The substance of the argument is that fundamental rights have validtiy only in the context of certain economic and social policies and not in isolation If this argument is accepted and it should certainly be accepted courts should not have declared many steps of the state meant for the abolition of Zamindari and nationalisation of key industries Commenting on this point Ex Chief Justice of India Shri Gajendra Gadkar says ' When laws were passed in States like Uttar Pradesh Madhya Pradesh and Bihar with a view to bringing about this over due agrarian reforms their validity was challenged In Madhya Pradesh and Uttar Pradesh the challenge failed but in Bihar challenge succeeded and the Patna High Court held that the impugned Bihar legislation was unconstitutional [109] Thus many courts while giving decisions ignored the background and sources of the rights of our Constitution The quintessence of the argument is that even as early as 1931 National Congress Organisation pledged itself to a set of Fundamental rights only in the context of well expressed and accepted economic and social policies, that is the Fundamental rights should be and shall be conditioned and attuned to the relevant economic and social policies This exactly has been done by incorporating in the provisions of Directive Principles accepted economic and social policies and these are to condition the scope and extent of the Fundamental rights The Fundamental rights should be understood and interpreted in harmony with these economic policies expressed in the chapter of Directive principles

Now a second point is to be taken for discussion, whether any hint has been given in the text or the speeches associated with the adoption of the resolution on Fundamental rights in 1931, that rights contained therein are of two distinct status, one of superior or the other of inferior In fact no such thing has been suggested The rights of this text have been distributed and mentioned in both the chapters that is in Fundamental rights chapter and directive principles, for example the substance of clause (1) of article 1 of

this text "every citizen of India has the right of free expression of opinion the right of free association, and combination, and the right to assemble peacefully ' have been incorporated in the Article 19 of Fundamental rights chapter vide clauses (a), (b) & (c) The substance of clause II of Article (1) of this resolution in Article 25, clause (3) "The culture, language and script of the Minorities in the Articles 29 and 30 of our Constitution The other rights also have been included in the Articles of Fundamental rights chapter [108] Similarly the substance of Article 2 clause (a) the organisation of economic life must conform to the principles of justice to the end that it may secure a decent standard of living (b) the state shall safeguard the interests of the Industrial workers a living wage, healthy conditions of work (c) adequate provisions for leave during maternity period (d) ' Intoxicating drinks and drugs shall be totally prohibited except for medicinal purposes have been incorporated in the articles of Directive Principles vide articles 43, 42 47 etc Thus the rights enumerated in the Resolution on Fundamental right have been distributed in both the chapters concerned with the rights—chapter of Fundamental Rights and Directive Principles according to the expediency and practical need, the basis of this expediency being that whatever Fundamental Rights State could give to the Citizens immediately on the enforcement of the Indian Constitution were put in the chapter III and the rest for the realisation of which ome time was needed till economic and social circumstances improved were put in the articles of Directive Principle Thus again it is proved that the basis of classification of rights in the e two chapters or parts of our Constitution is merely the compu sion of practical needs and not the ideal or any Principle or political philosophy that tho e included in one part are of superior status and those not enforceable by the Courts included in the other are of inferior status

The second source of the rights of our Constitution is the ' Objectives Resolution ' introduced by Late Pt Nehru in Constituent Assembly on December 13th 1946 Our Rights whether included in the Chapter III or in IVth emanate from the Karachi

necessity and not for giving a special status to one group of rights If the force of this argument as supported by the evidences mentioned previously, is accepted there is no justification in treating one set of rights as of greater value or of a higher status as has been done in a number of court decisions

It is the accepted principle of the fundamental rights in our constitution, that they are not absolute By a number of clauses and sub-clauses they have been limited in scope This limitation has been imposed in the interest of (i) Scheduled Castes and Scheduled Tribes (ii) In the interest of minorities (iii) In the interest of general public morality public order peace and relations with friendly foreign countries If the fundamental rights have been limited in the general interest of the public and courts have recognised the reasonability of these limitations on fundamental rights and if this argument and logic is accepted that fundamental rights can be limited in scope in the interest of general public further limitations can justifiably be put on the scope of fundamental rights if there is need in the interest of general public and common masses as envisaged in the provisions of directive principles The provisions of directive principles are in main the means to uplift poorer section of the community such as labour class backward and scheduled castes Therefore if need be for the upliftment and for creating conditions of better economic and social life for millions of people who have so far suffered have not got justice so far the property rights of others can be further limited It has been already pointed out that fundamental rights have validity only in the context of an accepted economic and social policy The provisions of directive principles are therefore to condition the scope of fundamental rights if a new order is to be established where the state will provide the right to work to education of public assistance in case of unemployment old age sickness and will make provisions for humane conditions of work, where all people will get living wage enjoying decent standard of life where the health and strength of workers and the tender age of children are not abused by the force and compulsion of economic necessity where ownership and control of the material resources of the community will be distributed so as to subserve the common good, and where operation of the means

economic system does not result in the concentration of wealth, and of production to the common detriment, and where all the citizens men and women equally have the right to an adequate means of livelihood, and where there will be social economic and political justice in all the institutions of the national life But the rigid defence of fundamental rights of property to a very great extent has belied the hopes and expectations of the establishment of a social order as enumerated in the directive principles of state policy When directive principles were being discussed in the constituent Assembly, many members had expressed their, fear, anxiety and apprehension about the destiny of these principles in future Prof K.T Shah was constrained to say "The Directives are in my opinion, the vaguest, loosest thickest smoke screen that could be drawn against the eyes of the people and may be used to make them believe what the drafsmen never intended or meant perhaps When those matters are brought before the tribunals for adjudication or arbitration they might not be interpreted in the sense the people might believe those clauses to convey "[106] Many decisions of the courts have proved that Prof K T Shah s fears about the destiny of these principles were not without reasons On the other hand Dr Ambedkar drew a very rosy picture about the future importance of directive principles and he assured in the constituent assembly ' While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy It is therefore no use saying that the directive principles have no value In my judgment the directive principles have a great value for they lay down that our ideal is economic democracy Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution without any direction as to what our economic ideal as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution. [107] Elucіating the value of these Directive Principles Dr Ambedkar further said in the Constituent Assembly "I am not prepared to admit that they have no sort of binding force at all nor am I prepared to concede that they are useless because they

have no binding force in law The Directive Principles are like the instruments of instructions who should be in power is left to be determined by the people as it must be if the system is to satisfy the tests of democracy but whoever captures power will not be free to do what he likes with it In the exercise of it he will have to respect those instruments of instructions, which are called Directive Principles He may not have to answer for their breach in a court of law but he will certainly have to answer for them before the courts of electorate at election time [108] However, the decisions of courts in a number of cases regarding abolition of Zamindari and nationalization of some industries and services etc have created serious set back in the realisation of economic democracy [109] When constitution was ready and when there was a general discussion about the nature of the Draft constitution many members of the constituent Assembly expressed the view that the economic and social aspects of the problems of India have not been adequately expressed in the constitution Shri Arun Chandra Guha (West Bengal) remarked When we are going to frame a constitution it is not only a political structure that we are going to frame it is not only an administrative machinery that we are going to set up it is a machinery for the social and economic future of the nation I feel as for the economic side the Draft Constitution is almost silent It is rather anxious to safeguard the sanctity of property it is rather anxious to safeguard the rights of those who have got some thing and it is silent about those who are dispossessed and who have got nothing While there is much talk about the sanctity of property and the inviolability of property, things such as right to work right to means of livelihood and right to leisure etc. have been loft out and these things should have been effectively incorporated in the Constitution [110] Through these words Shri Guha was emphasizing that the directive principles in which the ideals of right to work, right to means of livelihood and right to leisure etc have been included should be accorded due importance

Therefore it is not in fitness of the totality of the scheme of our constitution, to treat these rights (of Directive Brinciples) as of

subordinate order In fact if aspirations of the people are to be materialized and economic justice and economic equality is to be established, it is better to accord to them superior value, and fundamental rights should be made to subserve to them, if need be It has been pointed out through the study of the history, background and sources of the rights incorporated in Indian Constitution that the division of 'Rights in two chapters has been done merely for the sake of necessity and for no other reasons Rights of both chapters emanate from the same source and same sentiments The rights of Directive Principles are as much part of the Constitution as those of Fundamental Rights Chapter In fact more important rights which were left in unrealisable position due to circumstances and situation have been included in the Directive Principles and are to be made realisable through Directive Principles According to Article 37 111 It is the bounden and constitutional duty of the state to implement Directive Principles, and not to do so will not only reverse the entire historical process but also will be unconstitutional It is not justified to treat one set of rights as sacrosanct as if the other rights are less sacrosanct On the overall assessment the rights of Directive Principles chapter are more important and if there is a clash between the two viz chapter III & IV those of Directive Principles have to be given superior value and those of Fundamental Rights Chapter which come in the way of realisation of the rights of Directive Principles should be made to subserve them by the suitable amendments of the Constitution

Speaking on the motion by which he introduced the Fourth Amendment to the Constitution in Parliament Prime Minister Nehru observed that where there was a conflict between a Fundamental Right and a Directive Principle the latter should prevail This opinion may appear to be in direct conflict with the view of the Supreme Court But on closer examination it will be seen that the conflict is apparent rather than real The courts cannot go further than that but Parliament can The final solution is arrived at only when the social conflict arising out of the competing claims of a justiciable and a non justiciable right are resolved The guiding principle here is the superiority of the social interest over that of the individual To facilitate the putting into effect of these principle the constitution may have to be amended and the

Directive Principle allowed to prevail It should however be added that whenever the Court is called upon to resolve a conflict between a Fundamental Right and a Directive Principle it is the duty of the Court to resolve the conflict with an eye on the fundamental spirit of the Constitution and with a view to harmonizing differences to the extent that is possible and feasible

The significance of Directive Principles in relation to that of Fundamental Rights can be determined only by making a reference to the object of the Constitution makers in making these principles an integral part of the Constitution As has already been pointed out they represent the basic principles which aim at the creation of a Welfare State Taken together these principles form a character of economic and social democracy in India On the one hand they are assurances to the people as to what they may expect while on the other they are directives to the governments Central and State as to what policies they ought to pursue It is unfair to the people as well as inconsistent with the spirit of the Constitution to allow these principles to remain pious wishes Every effort should be made by the representatives of the people and the agents of the government to translate them into reality Nothing should be allowed to stand in their way even the fundamental rights guaranteed to the individual After all the progress and welfare of society as a whole should not be hampered by the rights of the individual This is why every fundamental right is subject to reasonable restriction in the interest of the general public whether such restrictions are on account of Public Order morality decency, health or anything else It is in this sense that the Fundamental Rights are to subserve the Directive Principles Indeed, there can be no real conflict between the two They are intimately related to and inseparably bound up with each others [112] These words speak very eloquently about the importance of Directive Principles in relation of conflicting fundamental rights

It has thus been proved in this chapter (i) That rights in the Indian Constitution are not contained only in the chapter of Fundamental Rights, (ii) That 'rights also find expression in the chapter of Directive Principles (iii) The study of the sources and the scheme of the classification of rights' in the Indian Constitu

tion, does not warrant that one set of 'rights' may be considered of a special status (iv) In fact more important 'rights' exist in the provisions of directiveprinciples (v) Sources of 'rights' whether included in chapter IIIrd or IVth are the same and that they were distributed in two chapters on account of practical need, (vi) The absence of those conditions due to which 'rights of the chapter of Directive Principles could not be made justiciable from the beginning of the constitutions have to be realised and any obstacles in the realisation of those conditions will be patently un constitutional, (vii) The scope of fundamental rights from the very beginning as a matter of principle has been limited in the interest of general public, scheduled and backward classes and hence further limitations can be justifiably imposed in the interest of these classes (viii) Fundamental Rights have been accepted only in the context of the particular type of economic and social policy and this principles is not new It was declared even as back as 1931 through the resolutions on Fundamental Rights and economic policy, adopted by the A I C C at its Karachi Session (1931), (ix) Therefore Directive Principles in which mostly matters and issues of economic and social policy have been included can and must condition the scope of the fundamental rights

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5A RIGHT TO PROPERTY -Article 31-Its amendments and its relation to Fundamental Rights and Directive Principles of State Policy

The discussion of property rights is very significant The entire concept of Socialism establishment of a new Social and Economic order, *ending of the system of Zamindari the steps for* making Kisans owner of the land, removal of the concentration of wealth provisions of better and humane condition of work for the labour etc all revolve round the right of property The issue of the conflict of Fundamental Rights and Directive Principles is also mainly related to the right of property it has been pointed out in chapter III through the historical study of the aims and aspirations of our freedom struggle that in future Zamindari system and large scale property rights will be abolished but in spite of this whenever state has made any attempt to abolish Zamindari etc its attempts have been to a great extent frustrated in the defence of one or the other fundamental right It is now proposed to deal with the nature and extent of our fundamental rights to property and their relation to Directive Principles This is important because our Constitution has been amended more than once in relation to property rights Originally clause 2 of Article 31 read

No property, movable or immovable including any interest in or in any company owning any commercial or industrial undertaking shall be taken posses ion of or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given

In the present Article 31 (clause 2A) was inserted by the Constitution (Fourth Amendment Act, 1955) and that clause 2 in its present form was replaced by the same Act for the original clause which has been quoted above Now Article (before 42nd Amendment) 31 reads as follows —

31 (1) No per on shall be deprived of his property save by authority of law

(2) No property shall be compulsorily acquired or requisi save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined and given and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate

(2A) Where a law does not provide for the transfer of the owner ship or right to possession of any property to the State or to a a corporation owned or controlled by the State it shall not be deemed to provide for the compulsory acquisition or requisi tioning of property notwithstanding that it deprives any per son of his property [1 2] Article 31 A (2) substituted bythe Constitution (Fourth Amendment) Act 1955 S 3 for the ori ginal clause (with retrospective effect) 31A (1) Not withstand ing anything contained in article 13 no law providing for —

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper manage ment of any of the corporations or

(d) the extinguishment or modification of any rights of managing agents secretaries and treasurers managing direc tors directors or managers of corporations or of any voting rights of shareholders thereof or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement lease or licence for the purpose of searching for, or winning, any mineral or mineral oil or the preamature termination or cancellation of any such agree ment lease or licence, shall be deemed to be void on the gro und that it is inconsistent with or takes away or abridges any of the rights, conferred by article 14 article 19 or article 31,

the appellant it is considered that it means the monetary equiva lent to the owner of the property of which he has been deprived

The conclusion must therefore be that compensation in Article 31(2) means the equivalent in value of the property taken or acquired subject only to the qualification that such equivalent need not be paid in money One of the provisions of clause (2) is that law must provide for compensation and as such compensation means the equivalent in value of the property acquired (as we have already held it) it follows that any provision for giving by way of compensation less than the equivalent will not amount to compensation in law and will *constitute contravention of that clause Whether the law provides* for an adequate payment or for discriminatory payment to different owners the result is the same a failure to provide for compensation in law [115] (It was also observed in this case that if a provision in any act providing different amount as compensation for the acquisition of the property is given for different slabs of income then also it contravenes the provision of Article 14 because it is discriminatory and then it also contravenes Article 31 (2) Further in a similar decision of the Rajasthan High Court in the case of Nathmal v/s Commissione Civil Supplies the comments in the decision were We may add that if that was the intention of the framers of the Constitution that compensation provided under Article 31 (2) should not be justiciable and that whatever was paid by the legislature would be proper compensation it would have been unnecessary to provide Article 31(4) and Article 31(6)

We are therefore of opinion that the compensation to be provided by law when property is taken away should be fair compensation which means equivalent in value of the property taken or acquired subject only to this qualification that such equivalent need not be paid in money [116]

We may now further refer to West Bengal Planning & Development Act and it being declared unconstitutional due to the inadequacy of just compensation by the Supreme Court of India The State of West Bengal appealed against that decision of the High Court of Calcutta in the Supreme Court where the arguments of the Calcutta High Court were upheld The Supreme Court maintained unanimously on 11th December 1953 in its

famous decision on Bela Banerjee v/s State of West Bengal The provisions of the Section 8 of the West Bengal Act XXI of 1948 making the declaration of the Government conclusive as to the amount of compensation so as not to exceed the market value of the land to be acquired on December 31 1946 were ultravires of the Constitution and void that in as much as Article 31 (2) of the Constitution made the existence of such purpose a (public purpose) a necessary condition of acquisition the existence of such a purpose as a fact must be established objectively that the impugned Act (W B Act XXI 1948) was not saved by Article 31 (5) of the Constitution from the operation of Article 31 (2) thereof as if it had not been certified by the President of India as provided for by Article 31 (6) that while it is true that the legislature is given discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated such principles must ensure that what is determined as payable must be compensation that is just equivalent of what the owner has been deprived of that within the limits of this basic requirement of full indemnification of the expropriated owner the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable but that such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected is a justiciable issue to be adjudicated by the court 117 The Supreme Court further maintained in continuation ' turning now to the provision relating to the compensation under the impugned Act it will be seen that the latter part of the provision to Section 8 (thereof) limits the amount of compensation so as not to exceed the market value of the land on December 31, 1946 no matter when the land is acquired Considering the impugned Act is a permanent enactment and lands may be acquired under it many years after it came into force the fixing of the market value on December 31 1946 as the ceiling on compensation without reference to the value of the land at the time of acquisition is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of Article 31 (2) - We accordingly hold that the latter part of proviso (b) to Section 8 of the

impugned Act which fixes the market value on Dec 31 1946 as the maximum compensation for lands acquired under it offends against the provisions 31 (2) and is unconstitutional and void The appeal is dismissed with costs [118]

These decisions have been dealt in detail on purpose so as to make it abundantly clear that what were the views of the courts of the land regarding acquisition of property and its compensation and to show by critical study how far these views were in harmony with the expressed views of a new social and economic order to be established in India in consonance with the socialistic aspirations of our constitution and the ideals of an egalitarian society? The study of these decisions is also important because they sought to turn our constitution in a direction which was never intended or visualised by the framers of the constitution Late Pt Nehru s speeches in the Parliament at the time of the consideration of the Fourth Constitution Amendment Bill cleared many issues of our constitution The vigorous defence of this amendment by Pt Nehru and his colleagues saved the constitution from taking a turn which was never desired and by explaining the new concept of property and compensation the relative value of Fundamental Rights and Directive Principles, he created a new awareness regarding the fundamentals of our constitution and thus Pt Nehru gave the constitution a right direction His views latter on were accepted by many courts of India including the Supreme Court in many cases [119] Therefore the critical study of these decisions is very important to know whether our constitution was drifting It should be noted that these decisions of various courts were not in harmony with the ideals and aspirations of our freedom struggle nor with the socialistic aspirations of our constitution They are not in accordance with the sentiments of the Preamble of the Fundamental Rights Resolution of 1931 accepted by the Congress nor are they in agreement with the Objectives Resolution introduced by Pt Nehru in the Constituent Assembly

In short these decisions praise some very important issues Firstly they raise the most important point whether originally also (before the relevant amendment) the wordings of Article 31 (2) allowed the question of justiciability and reasonability of the compensation to be heard and decided by the courts Secondly, they

the legislature the final word to determine the law [121] Similarly Justice Dass of the Supreme Court maintained ' a procedure laid down by the legislature may offend against the court s sense of jus tice and fair play but that is wholly irrelevant consideration The constitution is supreme The court must take the constitution as it finds it even if it does not accord with its preconceived notions of what an ideal constitution should be Our protection against legislative tyranny if any lies in ultimate analysis in a free and intelligent public opinion which must eventually assert itself

On serious reflection I find several insuperable objections to the introduction of American doctrine of procedural due process of law into our constitution That doctrine can only thrive and work where the legislature is subordinate to the judiciary in the sen e that the latter can sit in judgement over and review all acts of the legislature Such a doctrine can have no application in a field where legislature is supreme Although our constitution has imposed some limitations on the legislative authorities yet subject to and outside such limitation our constitution has left our Parliament and the State Legislatures supreme in their legislative fields In the main subject to limitations I have mentioned our constitution has preferred the supremacy of the legislature to that of judiciary The English principle of due process of law is there fore more in accord with our constitution than the American doct rine which has been evolved for serving quite a different system [122] C J Kania and Dass J further held in the case of A K Gopalan Vs the State of Madras in 1950 law in Indian *con titution means only the law made by the competent legisla* ture it is not endowed with the customary notion of natural jus tice good law bad law etc The word law has been used in the sense of state made law and not as an equivalent law in the abst ract of general sense embodying the principles of natural justice that is the expression ' procedure established by law means proce dure established by law, made by the State that is to say Union Parliament or the legislatures of the State and it is not proper to construe this expression in the light of the meaning given to the expression due process of law in the American Constitution by the Supreme Court of America [123]

Similarly J Patanjali Shashri also held "I am unable to agree

that the term law in Article 21 means (it is true for other articles also where the word "Law occurs in the constitution) the immutable and universal principles of natural justice It is difficult to accept the suggestion that law stands for the Jus naturale' of the civil law and that the phrase according to the procedure established by law is equivalent to due process in its procedural aspect, for that would have the effect of introducing into our constitution those subtle and elusive criteria implied in that phrase which it was the deliberate purpose of the framers of our constitution to avoid [124] Justice Kania elaborating this point further said "A perusal of the report of the Drafting Committee to which our attention was drawn shows clearly that the Constitutent Assembly had before it the American article and the expression 'due process of law but they deliberately dropped the use of that expression from our constitution There is therefore, no justification to give the meaning of 'Jus to law in Article 21 The phrase 'procedure established by law seems to be borrowed from Article 31 of the Japanese Constitution It is not shown that the word law means jus in the Japanese Constitution The word 'due in the expression due process of law in the American Constitution is interpreted to mean just according to the opinion of the Supreme Court of the U S A That word imparts jurisdiction to the courts to pronounce what is due from otherwise according to law The deliberate omission of the word due lends strength to the contention that the justiciable aspect of 'law' that is to consider whether it is reasonable or not by the court, does not form part of our constitution By adopting the phrase procedure established by law the constitution gave the legislature the final word to determine the law [125] Although the above cited views of the eminent judges are in relation to Article 21 of the constitution which comes under Right of Freedom but same is true for the word 'law used at other places also in our constitution including for Article 31 as is evidenced by the following comments of Justice Kania The word law as used in this part (that is part IIIrd of the constitution) has different shades of meaning but in no other article it appears to bear the indefinite meaning of natural justice If so there appears no reason why in this Article it should receive this peculiar meaning Article 31, which is also in

Part III and relates to the fundamental rights in respect of property runs as follows No person shall be deprived of his property save by authority of law It is obvious that in that clause law must also mean enacted law The object of dealing with property under a different article appears more to provide the exceptions found in Article 31 (2) to (6) rather than to give the word 'law a different meaning than one given in Article 21 ' 126

Thus, the contents of the speech of Dr Ambedkar and opinions of a few learned judges quoted and cited above, convincingly prove that in the matter of law under Indian constitution final say has been left to the legislatures For this reason courts cannot give decision whether a particular law is reasonable or unreasonable, or whether it is just or unjust They cannot equate Jus with 'law' They can only decide about the constitutional authority that is whether a law has been made according to the established procedure and whether the powers to make that law has been granted by the constitution to that legislature or not The power of pronouncing whether the law is just or not, whether it fulfils the cannons of natural justice whether its contents are reasonable or not are not within the jurisdiction of the courts Further these views are applicable to Article 31 also which is the main point of discussion in this chapter Even after fully knowing the difference between the procedure established by law and due process of law our courts gave decision on the issue whether amount of compensation for acquired property under Article 31 (2) is just or not In Bela Banerji s case and few other cases cited in the beginning of this chapter courts pronounced that due to the unreasonable quantum of compensation, the part of the West Bengal Planning and Land Development Act as void of *the constitution In that case (Bela Banerji s case) Chief* Justice Harris had maintained But it seems to me that the word reasonable or 'just qualifying the word compensation is really not necessary because compensation to be compensation must be reasonable or just equivalent if it is not a proper equivalent then it is not compensation and anything which is unjust or unreasonable can never be regarded as an equivalent In my view Article 31 clause (2) requires a just amount to be given Similarly the Supreme Court maintained in the same case what

is determined as payable must be compensation that is ju t equivalent of what the owner has been deprived of but that such principles take in to account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected i a justiciable issue to be adjudicated by the court [127] Thus it should be noted that although courts were precluded from pronouncing judgement about the equivalent value of the compensation to be given by law, yet they did it

Now the second question which arises is that whether the words of original article 31 clause (2) gave any scope for the courts to entertain a case on the issue of compensation to be given for a property acquired under law for public purpose The relevant clause reads 'No property movable or imm vable including any interest in or in any industrial undertaking shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the prii c p'es cn which and the manner in which the compensation is to be determined and given If the above quoted words are careful'y noted it will be clearly observed that (1) for acquiring a property for public purpose there should be the authority of law (2) the law should provide for compensation or should either fix the amount of the compensation or determine the principles (3) no where the jurisdiction of court is permitted by the language and words of this clause The words do not say that courts can determine whether the compensation is reasonable or not Only the legislature and law made by it and compensation determined by it are in picture Even with this clear position the courts entertained cases and gave decision on the question of justiciability of the compensation and even maintained that the question whether compensation given for the acquired property is just or unjust reasonable or unreasonable is a ju ticiable matter Thus courts went beyond their jurisdiction

Now we come to the next important point which arises as a consequence of such decision about just ciability for the acquired property These decision had far reaching repurcussions on such matters for example on the welfare schemes of the country

mainly abolition of Zamindari and other political and social and economic questions It also created the question of authority of Parliament vis a vis judiciary and relative importance of the many provisions of Directive Principles in relation to fundamental rights of property and profession Such decisions were mainly responsible for the introduction amendment Bill (Fourth, and subsequent constitution Amendment Bills)Tempers ran high in the Parliament on the issue of this Constitution Amendment Bill and there were heated controversies and discussions inside and outside Parliament about the fundamental of our constitutions in relation to property [128] Some people called this amendment a fraud on the Indian Constitution Through this amendment in a very clear language courts prohibited from entertaining any case regardin justiciability or the reasonability of the compensation for the acquired property Regarding this amendment and for explaining the intentions of the framers of the constitution about the payment of compensation for the acquired property Pt Nehru said in Lok Sabha on 14th March 1955 It was my privilege in fact to move this Article (Article 31) or the correspondence one (Article 24 of the Draft Constitution of India) before the constituent Assembly and I gave expression to my views as to what it meant fairly clearly then One might presume therefore what the intention of the movers of those articles was when they placed them forward and therefore what the intention of the Constituent Assembly was at that time But we need not trouble ourselves about it If the Supreme Court or the High Courts of this country have interpreted those articles in a different way, contrary to the intention as expressed by the very movers of these articles in the Constituent Assembly, they have every right to do so We can not say that they should go back to refer to the speeches made and the rest It simply means that we who put forward these articles were in error in drafting them we did not put forward, we did not define precisely whatwe meant Now I had thought when we passed this article in the Constituent Assembly that we had made it perfectly clear that Parliament would fix either the quantem or the rules governing compensation and after that there would be no challenge at all Well inspite of that it has been challenged and in fact challenged effectively In fact what we are doing

so far Article 31 is concerned is that we are merely repeating but in more precise and clear language what we had said before That is, previously it has been said — —that there would be com pensation but Parliament would determine the quantum of it or fix the rules governing it [129]

From the above quoted lines of the speech of Pt. Nehru it is clear that even in the Constitution As embly it was pointed out that the question of the compensation will be in the control of the Parliament and court shall not give decision whether the com pensation is reasonable or unreasonable, just or unjust Thus it has been discusssed that due to the existence of 'procedure estab lished by law courts went beyond their jurisdiction The words of the relevant clause of Article 31 also did not warrant the interference of the courts and now it has been just pointed out that even in the Constituent Assembly it was made clear that in the matter of compensation legislatures will have the final say and courts will not interefe e and it was made clear beyond doubt that the interference of the courts will not be tolerated in the programme of establishment of a new social and economic order to be achieved by eliminating the vested interests on land and other property Regar ding land policy of the Congress & Government Pt Nehru in the most emphatic language expressed many years before as follows—

' The policy of the abolition of big estates is not a new policy but one that was laid down by the national Congress years ago So far as we are concerned we who are connected with the Congress shall naturally give effect to that pledge completely—one hundred per cent —and no legal subtlety no change, is going to come in our way That is quite clear We will honour our pledges. Within limits no judge and no supreme court will be allowed to constitute themselves into a third chamber No supreme court and no judiciary will sit in judgment over the sovereign will of Parliament which represents the will of the entire community [130]

Thus the position of the judiciary in relation to abolition of Zamindari was made clear nearly six years before the discussion of the IVth Constitution Amendment Bill in the Parliament. (and nearly twenty five years before the enactment of forty fourth amendment Bill)

5B Arguments in favour and against the fourth Constitution Amendment bill

These decisions and consequently Fourth Amendment of the constitution created great constitutional political and legal stir and furor in the country and the fundamentals of our constitution and our political philosophy came under heavy and acrimonious discussions The careful perusal of previously mentioned decisions of various High Courts and unanimous decision of Supreme Court in the case of Bela Banerjee vs the State of West Bengal, raise very important issues for critical discusion

The speeches of Late Pt Nehru then Prime Minister, Shri H V Pataskar Minister in the ministry of Law Shri Govind Vallabh Pant Minister of Home Affairs in the Parliament defended that the question of determination of the reasonability of compensation for acquired property is beyond the scope of judiciary and originally also courts were on purpose precluded to give decisions on this issue The Fourth Constitution Amendment Act prescribes in the most clear language that courts will not entertain these questions in future It was argued by these leaders that they are not changing the contents of the relevant articles of the constitution but are merely repeating the old thing but in a more precise and exact language so as not to leave the courts in any doubt about their scope on this point On the other hand by the opponents of this amendment it was argued that this amendment will abridge peoples fundamental rights of property and will expose them to the tyranny of the legislature and they will be deprived of the protection of the courts The sum and substance of the speeches of the defenders of this amendment was that it was urgently necessary to avoid the interference of the courts if we want to establish in India a socialistic pattern of society and to realise the promised and expected circumstances of economic and social justice of a welfare state Further it was emphatically expressed that this amendment (Fourth Constitutional Amendment) was in keeping with the real wishes of the framers of the constitution and it harmony of the ideals of our freedom struggle, and in continuation of the evolution of our cherished aims and real aspirations of

our constitution It was further asserted in these speeches that these decisions of the courts have created a situation of apparent contradiction and conflict between Fundamental Rights and the Directive Principles of the State Policy This amendment would, therefore pave way for the removal of inherent contradictions, between these two parts of the Indian Constitution and if need be fundamental rights will be made to sub erve the sentiments of directive principles As a corollary of this it was also argued that the concept of private property should be related to social utility, that old concepts must change in a progressive and dynamic society Millions of backward people of India deserve more protection than a few privileged having entrenched vested interests in property and courts must take in to consideration all these facts while giving decisions on the issues of fundamental rights i e the scope and extent of the fundamental rights should be in tune with the necessities of a socialistic pattern of society and welfare state

The question of relative importance of directive principles and fundamental rights also came in forefront and assumed great constitutional and political importance The supporters of this amendment justified it on the plea that without it the ideals of Directive Principles will not be translated into action while the opponents of this amendment put forward the arguments that unenforceable directive principles cannot and should not over ride the provisions of enforceable Fundamental Rights Commenting on this point Dr N C Chaterji said in the Lok Sabha on 11th April 1955 'The purpose of this Fundamental Rights Chapter was that no matter what majority you have there are certain forbidden sectors on which you will never tres pass The purpose of Fundamental rights is that certain legal principles should be established beyond the reach of the Parlia ment and the executive, to be applied by the courts of law——; You cannot enforce Directive Principles Our Constitution says expressly that they are non justiciable—— There lies the main difference between Fundamental Rights and Directive Principles ———these Fundamental Rights were made to withdraw certain items from the reach of political controversy, and to provide certain essential safeguards which are regarded as sacred' 131

In opposition to such views on the value of Directive Principles in relation to Fundamental Rights Pt Nehru said upholding the superiority of Directive Principles on 14th March 1955 in Lok Sabha ' I would like to draw the attention of the House to some thing that it is not adequately stressed either in Parliament or in the country We stress greatly and argue in courts of law about the fundamental rights Rightly so but there is such a thing also as the Directive Principles of the constitution Even at the cost of *repeating them I wish to read them out (The Primeminister refer* red here to Articles 37 38 and 39 of the constitution) These are as the constitution say the fundamentals in the governance of the country Now I should like the House to consider how you give effect to these principles if the argument which is often being used even if I may say so with all respect by the Supreme Court is adhered to, You cannot You may say you must accept the Supreme Court s interpretation of the constitution They are wiser than we are in interpreting things But I say, then if that is correct there is an inherent contradiction in the constitution between the fundamental rights and the Directive Principles of State Policy Therefore, again it is upto this Parliament to remove that contradiction and to make the fundamental rights sub serve the Directive Principles of State Policy [132]

A number of other political leaders also gave their views on this issue Shri Pataskar who was at that time Minister in the Ministry of Law said in the Lok Sabha on 14th March 1955 that ' it was not a correct procedure to try to construe (as according to him, the Supreme Court of India had done) the Indian Constitution on the basis of the words and phrases which occur in the Constitution of Australia Canada or the United States of America, as these constitutions were meant for being useful to different countries for the solution of their own different problems [133]

He held that the provisions of our constitution should be in *terpreted in the light of Clause 5th of the Objectives Resolution* unanimously adopted by our Constituent Assembly on 22nd January 1947 the Preambl of our Constitution and the Directive Principles of State Policy as embodied in Part IV of the Constitution He further observed The most important provision in this connection is Article 38 (of the Constitution) which lays down that the

State shall strive to promote the welfare of the people by establish ing a social order in which justice, social economic and political shall inform all the institutions of the national life Whatever is laid down in Articles 19, 31 and similar provisions (of the Constitution) has to be interpreted in view of this policy of a welfare state If you do not take any account of this thing and try to interpret the Constitution the interpretation is bound to be incorrect

Our Constitution is an independent piece of work not based on any particular Constitu ion but is framed on the historical background of our constitutional development and the particular needs of our country, in view of the goal which has been set before us That must be taken into account for its proper interpretation

There is no point in arguing about the sanctity of property If there is any interpretation by which the progress of the country is going to be held up, such an amendment (i e the proposed Fourth Constitution Amendment Bill) is the only solution To argue that by this amendment we are trying to take away the authority of the courts is not correct We are trying to restore what the Constitution makers really intended In our opinion the present Articles are enough for the purpose for which they are intended But on account of the interpretation of the Courts it has become necessary to bring forward this legislation. It should be more appropriate to hold that our Constitution makers trusted the legislatures to protect the rights of citizens as the people of Great Britain trust their Parliament to protect (the) people s property The intention of the framers of the Constitution can not be allowed to be negatived or hampered by incorrect interpretation" 34

Speaking on the same point and expressing similar views Shri Govind Vallabh Pant then Minister of Home Affairs said in Rajya Sabha on 17th March 1955 "Our Constitution enshrines the main purpose and objective of our national policy Our society is to be based on the twin pillars of social and economic justice The Preamble embodies the main objective for which the Parliament is designed and intended to function It has, besides the Preamble the Directive Principles which in a way chalk out the road which will lead to the goal which has been defined in the Constitution The function of the Parliament is the most

important It has unlimited scope and it can if it so chooses and if circumstances so require, make far reaching changes in the Constitution But when there is a conflict between the main central objective of our social reconstruction policy, the Fundamental Rights, the Directive Principles and Parliamentary legislation on the one hand and the *decisions of the Supreme Court on the* other some way has to be found out to establish harmony between all these The course of legislation during the last few years *has revealed defects in* Article 31 of our Constitution *It* is with a view to curing that effect that this Bill has been placed before this House' [135] Commenting further on the importance and significance of Article 31 which is the subject matter for discussion in this Chapter, Shri G B Pant said 'Article 31 is concerned with a vital matter The original clause in the Draft Constitution was I think Clause 24 That by itself was the subject of a prolonged controversy and some of us happend to be concerned with that controversy even then Some basic fundamentals were accepted and are accepted even today There are different purposes for which properties have to be acquired Social legislation affecting the community in general or large sections of it stands on a different footing and it has to be viewed from a different angle It is there that Article 31 comes in It was by itself a sort of a compromise Article That Article however, laid down that compensation would be paid for acquisition but the quantum of it or the principles and the manner in which or in accordance with which such compensation was to be given should be determined by Parliament It was then the view of very eminent jurists like Shri Alladi Krishnaswami Ayyar and also others that the Parliament would be the final authority in the matter But the hopes have been belied It has been found that the courts did not agree with the interpretation which the authors of the Constitution thought it bore and it would convey They have construed the Article differently [136]

Expressing his surprise about the decisions of the Courts regarding property rights under Article 31 he further commented Many things have happened which were altogetherer beyond the range of imagination of the authors of the Constitution It has been found that the guarantees that they had given has been inter

preted in a manner which comes in the way of social legislation and which does not allow even very modest steps to be taken in the direction of social welfare We have decided to work for a welfare state of a socialistic pattern in our country, well, that may call for big changes We do recognise private rights even in property But it should not be forgotten that all private rights in property are the creatures of society Such rights exist because the State is able to maintain order and to follow certain policies Even if one were to say that compensation should be determined by the market value, the State could always order things in such a way that the value might almost be diminished and reduced to zero [137]

Concluding his arguments on the necessity of this amendment Shri G B Pant said in the Rajya Sabha on 20th April, 1955 "It has been said that we should not tamper with the Constitution lightly But what we are doing by means of this amending Bill today is to rehabilitate the Constitution and not to tamper with it The spirit of the Constitution the intention of the authors should prevail and where the language had been found defective or ambiguous it should be adjusted and revised so that the actual purpose for which the Constitution was framed and the intentions of the authors and the motives which actuated them may be fully borne out—— I should like to mention that the concept of private property is not a static one it has been changing from time to time In the good or bad old days slaves were regarded as private property Some time ago even women were treated as such But the concept of private property has been changing——One can easily say that private property is creature of the State——The need for this amendment arose out of the interpretations placed on this clause by the highest tribunal in this land in a series of cases which arose on this particular clause——in Bela Banerjee's case——It is impossible to carry out any measure of social legislation if the market value for the property acquired is to be paid especially when large schemes of social reforms are to be launched which we hope to in the course of the next few years No State can afford to pay the money equivalent of the property that will be acquired for the benefit of the poorer sections of the community in this land——It has, therefore to be

accepted that an amendment of Article 31 (2) has become unavoidable[138] Through these words Shri Pant refuted the charge that Govt is tampering with the constitution He defended this amendment for the necessity for establishing Welfare State Speaking the on issuse of compensation for the aquired property late Pt Nehru also emphasized that full compensation is neither possible for a poor state like India to give nor it should be given on the matter of principles because according to him under the provisions of Directive Principles State has to establish a new type of social order and provding the full compensation according to the decision of the Supreme Court will not establish the desired structure of society where justice social, economic and political shall inform all the institutions of national life and where economic concentration does not take place for the common detriment and where ownership and control of the material resources is distributed for the common good etc He said on 14th March, 1955 in Lok Sabha ' In the case of normal land acquisition the normal laws prevail and the normal full compensation *is giv n but wh re all this aff cts a m ich la ger sphere* the social sphere then we have provided differently If we are aiming as I hope we are aiming and we repeatedly say we are aiming at changes in the social structure, then inevitably you cannot think in terms of giving what is called full compensation Why? Well, firstly because you cannot do it Secondly because it would be improper to do it unjust to do it and it should not be done even if you can do it for the simple reason that all these social matters laws etc are aiming to bring about a c rtain stru ture of society different from what it is at present In that different structure among the other things that will change is this--the big difference between the 'haves and the 'have-nots Now if we are giving full compensation well, the haves' remain the 'haves and the 'have nots 'have-nots, it does not change in shape or form if compensation takes place Therefore, *in any scheme of social engineering if I may say so* you cannot give full compensation, apart from the other patent fact that you are not in a position nobody has the resources to give it——— We do want to give compensation and we intend to, as we have been doing you have to think not only of the type of property but the history behind it the social consequences behind it

and all that kind of thing in determining the compensation The object is not to expropriate the obect is not to injure anybody the object is a positive object to bring about a social change for the benefit of the largest number of people doing the least injury to any group or class Now in a matter of this kind therefore where you have to consider all these factors political, social economic, I submit that the judiciary is not the competent authority [139]

Pt Nehru had cleared much earlier the position regarding the Zamindari abolition and the opposition of the courts in relation to these progressive legislation When speaking in 1949 on the Amendment to Article 24 of the Draft, of the Constituent Assembly New Delhi September 10 1949 he said The land question may be settled in a different manner altogether The policy of the abolition of big estates is not a new policy but one that was laid down by the National Congress years ago and no legal subtlery, no change is going to come in our way That is quite clear Within limits, no judge and no supreme court will be allowed to constitute themselves into a third chamber [140]

The sum and substance of these speeches and arguments is that the fourth amendment of our Constitution as well as similar other amendments were urgently necessary to create in India the socialist pattern of society and to realize the ideals of a welfare state in the country Secondly this amendment was in accordance with the real wishes of the authors of the Constitution This amendment did not tamper with the constitution but rather it rehabilitated and strengthened it Thirdly this amendment was to remove inherent contradiction in the Constitution between the Fundamental Rights and Directive Principles of State Policy and that the concept of private property itself must change in a dynamic and progressive society and fourthly if some articles of Fundamental Rights come in the way of realization of the ideals of Directive Principles the former may be suitably amended so as to up-hold the superiority of Directive Principles for the realization of ideal of welfare and egalitarian society Fifthly the interpretation of the constitution should be done in relation to the history and ideals of struggle of freedom So far the first point is concer ed encugh material has been provided in previous chapters that our

constitution is socialistic in aspiration On the floor of the constituent Assembly itself assurances were given by Dr Ambedkar that socialistic principles have been incorporated in the Directive Principles and no government can afford to neglect them Regarding second point that this amendment was in accordance with the wishes of the framers of the constitution the above quoted abstracts from the speeches of Pt Nehru and Shri G B Pant it is quite clear that even in the constituent Assembly and in parliament it was pointed out that in future Zamindari will be abolished this view was formally accepted in the Fundamental Rights Resolution accepted by A I C C in 1931 in its famous Karachi Resolution However, this point was disputed by Dr B.R Ambedkar in the course of his speech in the Rajya Sabha on 19th March 1955 that he and his Drafting Committee of the Constituent Assembly could take no responsibility whatsoever for Article 31 of the Constitution and pointed out that Congress party in the Constituent Assembly was 'so divided within itself that we did not know what to put and what not to put that there were three sections in the Congress party and that one section led by Sardar Vallabhbhai Patel stood for full compensation full compensation in the sense in which full compensation is paid at market price plus fifteen percent solatium [141] 'According to him the second group led by Shri Jawaharlal Nehru was against the payment of compensation for abolition of Zamindari and other big estates However in the end a compromise formula was accepted that compensation would be given but courts will be kept out so far the reasonability of the quantum of compensation is concerned Dr Ambedkar pointed out in Rajya Sabha on 19th March 1955 that even Shri Pant had also previously admitted in the course of his speech in the Rajya Sabha on 17th March 1955 that the original clause 24 of the Draft Constitution which later on became Article 31 of the Constitution had had been the subject of a prolonged controversy and it was by itself a sort of a compromise Article Therefore it is difficult to agree fully with the contention that the change made by this amendment of the constitution was in accordance with the intention of the authors of the Constitution As a reply of this argument of Dr Ambedkar it is submitted that the original compromise on the quantum of compensation

and it being accepted that compensation will be paid but this matter will finally remain in the hands of parliament proves that in the matter of Zamindari abolition no litigation and interference of the courts will be tolerated It is further submitted that the original clause of article 31 regarding compensation was based on the agreement of the majority of the members of the congress party in the constituent Assembly otherwise this article could not be described as a compromise article, the important point in this regard is that nobody can dispute the fact that this compromise article was not according to the wish s of the majority Once there was a compromise on this issue there was no question of any division of opinion Hence it is safe to conclude that after the compromise formula the original article 31 was supported by the majority and hence Dr Ambedkar s argument does not seem to hold much weight Further to prove that what was the position in the constitutent Assembly when this particular article was under discussion we may refer to the views of Pt Nehru in the constituent Assembly on September 10 1949 while moving an amendment to article 24 of the Draft constitution (corresponding to article 31 of the constitution) "We will honour our pledges Within limits no judge and no Supreme Court will be allowed to constitute themselves into a third chamber No supreme Court and no judiciary will sit in judgment over the sovereign will of Parliament which repre ents the will of the entire community but ultimately the fact remains that the legislature must be supreme and must not be interefered with by the courts of the law in measures of social reform [142] These lines say in very clear cut terms that in the programme of abolition of Zamindari and other big estates on land the interference of the courts will not be tolerated and that is why fearing that such interference may come in future and actually create obstacles in such programmes original article 31 was worded in such a way that courts may not interfere So far this position is concerned there can not be any dipute But inspite of that courts entertained cases on the issue of compensation and declared many acts void passed by various state legislatures Thus the acceptance of this compromise formula by the majority of the congress party in the constituent Assembly proves that the arguments that this was not supported by the majority is proved

wrong Hence the original article 31, before the fourth amendment of the cunstitution was according to the wishes of the framers of the constitution but courts put a different interpretation on that article therefore it is justified to conclude that this amendment was necessary to make the wishes of the framers of the constitution, to prevail This actually was intended by this amendment and this is evidenced by the speeches of Pt Nehru, Shri G B Pant and Shri H V Pataskar which have been referred to in this chapter

Regardtng next point that concept of private property is a dynamic one and fundamental rights should be adjusted to the needs of the society it is submitted that even ex chief justice (Gajendra Gadkar) of India also supports the view that amendments & changes in fundamental rights are justified in the interest of socio economic reorganization of the society The principles of a new, class-less society are incorporated in the Directive Principles Hence, if need be Fundamental Rights can be justifiably amended in the interest of new social and economic circumstances as envisaged in the provisions of Directive Principles I shall illustrate this approach by indicating briefly how the Constitutional amendments made from time to time have sought to find a solution to the problems raised by the fundamental rights My point in mentioning some of these amendments is to illustrate my thesis that in seeking to achieve socio-economic justice democracy and the rule of law can not treat any proposition as absolute and any provision as infallible and beyond the pale of modification If experience shows that some change has to be made democracy and the rule of law do not hesitate to make the change because it is the very essence of sociological jurisprudence that like life, law itself must benefit by experience [143]

In essence similar views were expressed by the other defenders of this amendment

The Fundamental Rights even in the chapter III have been limited and conditioned in scope by number of clauses and sub clau e either in the interest of the State back ward section of the community, and Scheduled castes and minorities If this principles is extended to its logical conclusion there is no reason why should they not (Fundamental Rights) be further limited in the

interest of the general community and for the upliftment of Kisans and Labours as directed in the contents of Directive Principles In short the entire concept of Fundamental Rights and specially that of property rights should have social utility and be social service oriented In other words Fundamental Rights can justifiably be conditioned in the context of the demands of the contents of the chapter of Directive Principles if a community of equals is to be established which is the elaboration of the ideal of the justice, economic social and political In economic field justice means equal distribution of wealth in social field it means that people belonging to different communities and castes should have equal rights and none of them should have special privileges In the political field one man should be as important as the other without any distinction in choosing the government and with the help of the money and wealth democracy may not be either influenced or purchased

Summing up it can be said that the provisions of our Constitution should be held be interpreted in the light of Clause 5th of the Objectives Resolution the 'Preamble of our constitution and the Directive Principles of State Policy

6 The Importance of Preamble as aid in the understanding and Interpretation of the Constitution

Our Constitution is very detailed one and has been framed on the basis of the principles of many leading constitutions of the World such as that of U S A England Ireland etc Although great efforts were made to harmonise the principles of these various Constitutions into one yet occasionally contradictory elements come to the surface However at present as we are concerned with the contradiction between Chapter III and IV of the Constitution it is worth while to see how the study of the Preamble can help in the removal of this contradiction and uphold the greater importance of Directive Principles in relation to contradictory and conflicting elements of Fundamental Rights

Commenting on the importance of the Preamble our Constitution Pt Thakur Das Bhargava said in the Constitution Assembly on the 18 November 1949 "The Preamble is the most precious part of the Constitution It is the soul of the Constitution It is a key to the Constitution It is a proper yardstick with which one can measure the worth of the Constitution All the 395 Articles of the Constitution have to be measured with the yardstick of the Preamble and such provisions as stand the test of the Preamble are good and other should be taken as worth less [144] Preamble expresses the significance of the Articles of the Constitution in realation to the broad sentiments of the aims and aspirations for which the Constitution has been framed It gives us a clue of the direction although not of all details in which the Constitution has to move According to Maxwell a leading authority on the interpretation of Constitutions "The Preamble of a statute has been said to be a good means of finding out its meaning and as it were a key to the understanding to it and as it usually states or professes to state the general object and intention of the legislature in passing the enactment it may legitimately be consulted to solve any ambiguity [145] Emphasising the importance of the Preamble in the understanding of the Constitution Justice Story has said ' The Importance of examining the Preamble for the purpose of expounding the language of a Statute

has been long felt and universally conceded in all juridical discussions It is an admitted maxim in the ordinary course of the administration of justice that the Preamble of a statute is a key to open the mind of the makers as to the mischiefs which are to be remedied and the objects which are to be accomplished There does not seem any reason why in a fundamental law or Constitution of Government an equal attention should not be given to the intention of the framers as stated in the Preamble' [146] On the importance of preamble in the understanding of a statute or a constitution Basu Durgadas cites many examples and says 'The proper function of a preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood In short a court may look into the object and policy of the Act as recited in the Preamble when a doubt arises in its mind as to whether the narrower or the more liberal interpretation ought to be placed the preamble of our Constitution serves two purposes (a) it indicates the source from which the constitution derives its authority (b) it also states the objects which the constitution seeks to establish and promote [147] From the above quoted sentences it is clear that Preamble can be used to judge whether a liberal interpretation is warranted or not Secondly through its study the objects which the constitution seeks to fullfill can be found out From these it is also clear that reference to Preamble should be made in case of doubt and ambiguity and by inference it is also clear that adequate attention should be given to the intentions of the framers of the Constitution because it is expected that the intentions of the framers of the constitution will be incorporated in the preamble It is well known fact that the preamble of our constitution substantially has been taken from the Article 5th of the 'Objectives Resolution which was moved in the Constituent Assembly by Late Pt Jawaharlal Nehru on 13th December 1946 This means that the Objectives Resolution and the Preamble stand for same aims and aspirations and it will be quite logical to deduce that the aims of the Preamble' are same as were explained for the 'Objectives Resolution when it was moved in the Constituent Assembly The important point which is to be kept in mind is that Objectives Resolution contained the objectives for which Constitution

was to be made and these objectives were incorporated in the Preamble of our Constitution Therefore, it can be said that if one has to know the objectives for which our Constitution was framed a reference to the Preamble should be made It will be worth while to see and note what was expressed by late Pt Nehru when he moved the 'Objective Resolution' in the Constituent Assembly He referred to it as a High Adventure of giving shape in the printed and written words to a nation s dreams and aspirations He described it not merely a Resolution but a Declaration and a Pledge to the Nation and he requested the House to consider that Resolution not in the spirit of narrow legal wording but rather to look at the spirit behind the resolution He said "In this resolution which the House knows has been drafted with exceeding care we have tried to avoid saying too much or too little This resolution therefore steers between these two extremes and lays down certain Fundamentals only We have done something much more than using the word We have given the content of democracy in this resolution and not only the content of democracy but the content if I may say so of economic democracy Well I stand for socialism and that India will go towards the Constitution of a Socialist State and I do believe the world will have to go that way Only in one sense it (Objectives Resolution) limits our work i e we adhere to certain fundamental propositions no body challenges them but if any body should challenge them well we shall accept the challenge and hold our position but I wish to say that whatever the legal aspects of the thing might be there are moments when law is very feeble reed to rely upon when we have to deal with a nation full of passion and freedom [148] From the above quoted extract of the speech of late Pt Nehru at the time of moving the Objectives Resolution in the Constituent Assembly it is clear that he emphasized beyond doubt that we stand for certain Fundamental propositions and also emphasized the hope that India will make a Constitution on Socialist lines and not only India but the whole word may have to do it He further said that we stand to accept any challenge from any body for defending our Fundamental propositions, The Fundamental Propositions were (if whole speech is read) democracy, sovereignty of Indian people econo-

mic and social and political Justice etc For him the e onomic justice meant the acceptance of the principles of socialistic organization of society He expressed with full emphasis that if any body challenges these fundamenta's we shall hold to our position and accept the challeng that is if any attempt is made under whatever plea to negative the effects of these fundam ntals it will not be allowed In plain words it meant that we stand for socialistic type of economic and ocial organization However the Objectives Resolution could not be passed early in the Constituent Assembly and there was some delay, so Shri Nehru again spoke on its importance and urgency on 22 January, 1947 "How long are we to wait? And if we some of us who are mo e prosperous can afford to wait what about the waiting of the hungry and the starving? .. This resolution .. it brings promise of *freedom it brings the promise of food and opportunity to all*"[149] Thus he quite clearly expresses that the aims and aspiration of this resolution is to bring food and opportunity to all He furth r said in the same speech But taking it as a whole it is a resolution which has already received the full assent of this House and I hope that this Resolution will lead us to a Constitution on the lines suggested by this Resolution I trust the Constitution will lead us to the real freedom that we have clamoured for and that real freedom in turn will bring food to our starving millions clothing for them housing for them and all manner of opportunities for progress [150] The abolition of Zamindari as a programme for providing food for millions and taking of mis managed mills in the interest of consum r and labour class the construction of cheap houses by the West B ngal Govt for refugees on the land acquired from Bela Bann je and others and the cases brought before the courts for decisions on these points and issues and the decisions of the Courts against the interest of such programmes in the defence of some *Fundam ntal* Rights should be vi w d in the context of above expressed sentiments and then alone one can feel that much wrong was sought to be done by the defence of certain fundamental rights The above quoted lines can themselves throw enough light on the Objectives of this Resolution all manner of opportunities, food for millions starving clothing, and housing for them [151]

Now we focus our attention to the text of the 'Objectives Resolution and the 'Preamble of the Indian Constitution The articles 5th and 6th of the 'Objectives Resolution' are very important Article 5th reads ' wherein shall be guaranteed and secured to all the people of India Justice Social, Economic and Political Equality of status of opportunity and before the law, freedom of thought expression belief faith worship vocation, association and action subject to law and public morality And article 6th reads "wherein adequate safeguards shall be provided for minorities backward and tribal areas and depressed and other backward classes [182] These two articles form the core of our Rights and have been incorporated in the Preamble of our Constitution Some of these specially those of political nature such as right to equality before rights slaw, right of freedom of speech thought, expression belief and faith worship, vocation and associatiom of minorities etc have been included in the Part III that is Fundamental Rights chapter and have been made justiciable Similarly some of the social rights have also been included in chapter III such as equality of status and accessibility to various public places wells tanks, restaurants and hotels abolition of untouchability abolition of titles etc Mostly political rights in Chapter III have been conditioned in the interest of backward and scheduled castes according to the provisions of Article 6th of the Objectives Resolution It is one of the accepted scheme of our Constitution that backward and down trodden are to be elevated and provisians have been made for this aim both in Fundamental Rights Chapter and Directive Principles as for example 15 (1) and (2) 15 (4) 16 (3) 19(5) etc and article 46 of the Directive Principles

Now the words of Article 5th of the 'Objectives Resolution are ' wherein shall be guaranted and secured to all the people of India Justice Social, Economic and Political This means the securing and providing of the conditions of economic and social justice has been guaranteed by the Constituent Assembly a Sovereign body by the unanimous acceptance of the Objectives Resolution Mostly, the provisions through which these guarantees of economic justice are to be realized and fulfilled, have been included in the Directive Principles Now the argument is that if on the plea of non justiciability of Directive Principles, the process

of the realization of the Conditions and circumstances of the economic and social justice is blocked in the defence of justiciable rights of Fundamental Rights chapter how the solemn promise and guarantees given by the Constituent Assembly can be fulfilled? After passing the Objectives Resolution the Constituent Assembly as a Sovereign body representing the will of Indian people took a pledge to provide for the conditions of economic justice The concept of economic justice definitely has socialistic elements so far our political philosophy is concerned and for Pt Nehru the mover of this resolution it could not be anything but pure and simple socialistic in aspiration as has been established through our enquiry on the background of our political struggle in one of the previous chapters and the speeches of Pt Nehru at the time of introducing Objectives Resolution Economic justice in this context means the equalization of wealth and not its concentration in the hands of few people for the common determent It could not mean 'laissez faire or the economic justice and liberty of Nineteenth centuary free enterprise ideal Pt Nehru had said that rich and privileged will have to be deprive of their vested interests for the common good The process of equalization of wealth means upliftment of the poorer section of the community and the dilution of the concentration of economic power Through the following lines the position regarding agrarian reforms and such other programmes is clear "But the fact remains that when you change a social system or an agrarian system, the burden must fall on somebody [153] Through the unanimous acceptance of the Objectives Resolution by the Constituent Assembly it is quite obvious that this resolution became constitutionally, legally and morally the guiding star for the Constituent Assembly for framing the Constitution of India If the guarantees given on such explicit understanding for economic and social justice have to be materialized, then surely the provisions of Directive Principles will have to be given their due constitutional importance The Preamble also gives these guarantees in the name of the people of India WE THE PEOPLF OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens JUSTICE Social Economic and Political .. .. .. EQUALITY of status and of opportunity

One fails to understand how such categorical guarantees should not be fulfilled and obstacles created in their realization? It will be patently unconstitutional to put and tolerate any obstacle under whatever plea and under whatsoever argument in the realization and fulfilment of these guarantees even in the defence of conflicting Fundamental Rights

It may be charged here that more emphasis is being given to economic and social justice and not so much to political justice they and political rights This is due to the fact that when India be-came free bulk of political rights were provided to its citizens had been achieved Political justice means one man one vote It also means that every government shall be on the anvil both in its daily affairs and also at the end of certain period when the voters and electorates will be given an opportunity to assess the work done by the Government These conditions exist normally in India and have been in existence since the Constitution became operative People can critisize the Government in the Parliament and outside and elections are held regularly Emphasizing the greater importance of Economic and Social rights Dr Ambedkar said in the Constituent Assembly on 25th November 1949 that on the 26th January, 1950 we are going to enter into a life of contradictions In political life we will have equality and in social and economic life we will have inequality In politics we will be recognizing the principle of one man one vote and one vote one value In our social and economic life we shall, by reason of our social and economic structure continue to deny the principle of one man one value How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? He further said But there can be no gainsaying that political power in this country has too long been the monopoly of a few and the many are [illegible] only beasts of burden

This monopoly has not merely deprived them of their chance of betterment it has sapped what may be called the significance of life These down trodden classes are tired of being governed This urge for self realisation in the down trodden classes must not be allowed to develop into a class struggle or class war [104] These lines point out that why more emphasis has been laid on social and economic rights and less on political rights

Speaking on the importance of social and economic rights and their organic relation with directive principles Dr Ambedkar further maintained in the Constituent Assembly "While we have established political democracy, it is also the desire that we should lay down an ideal before those who would be forming the Govern ment That ideal is economic democracy"[155]

Dr Ambedkar further said emphasizing the relation between the ideal of economic democracy and Directive Principles "It is therefore no use saying that the directive principles have no value In my judgment the directive principles have a great value, for they lay down that our ideal is economic democracy Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution Without any direction as to what our economic ideal as to what our social order ought to be we deliberately included the Directive Principles in our Constitution I think if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this constitution is really two fold (i) to lay down the form of political democracy and (ii) to lay down that our ideal is economic democracy and also to prescribe that every Government whatever it is in power, shall strive to bring about economic democracy, much of the mis understanding under which most members are labouring will dis appear[156] From these remarks and assurances of Dr Ambedkar it is celar that the framers of our Constitution have put the ideals of economic democracy and economic justice in the Directive Principles If the provisions of Directive Principles are negatived the guarantees of economic justice are negatived These guarantees of economic justice have been provided by the unanimous accept ance of the Objectives Resolution by the Constituent Assembly a sovereign body representing the combined will of the nation and have been further confirmed by the language of the Preamble that is the people of India are under solemn pledge to the ideals of economic justice and economic justice is to be realized through the Directive Principles Any move to oppose the realization of guarantees of economic justice to be achieved through the implementa tion of the Directive Principles should be considered broadly speaking unconstitutional

Commenting on the importance of referring to Preamble Justice Story further says ' It is properly resorted to where doubts or ambiguities arise upon the words of enacting parts for if they are clear and unambiguous there seems little room for interpretation except in case leading to an obvious absurdity or to a direct over throw to the intention expressed in the Preamble "[167] Many concerning decisions of the courts to which we have referred to previously have the effect of almost overthrowing the intention expressed in the Preamble There is a consensus of opinion among the leading authorities on the interpretation of the Constitution that reference may be made to Preamble in case of doubt and ambiguity In our Constitution there is definitely much confusion and doubt about the position of Fundamental Rights vis a vis Directive Principles It has contradictory elements as for example according to Article 32 (1) of our Constitution the right to move to Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed This is one guarantee Th Article 37 of Directive Principles says "The Provisions contained in this part shall not be enforceable by any court but the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws' This is second guarantee and that too a Constitutional one To solve such ambiguity and contradictions about guarantees Preamble should be used as an aid for correct right and balanced understanding If we note carefully the words of the Preamble of our Constitution to solve confusion about the relative value of Fundamental Rights and Directive Principles the latter dealing mainly with economic and social rights Justice-Social Economic & Political it can be observed that the first and fore most importance has been given to 'social then second to economic and then in the last to the word 'political justice Thus it is clear that economic and social justice have been given priority over political justice otherwise this particular sequence of these three words becomes meaningless On this argument if it is accepted that in the Preamble of our Constitution Social and Economic justice has been given prior and greater claims over those of political justice because the latter had already been realized to a great extent the superiority of Directive Principles through which these

prior claims of economic and social justice are to be realized is automatically established over Fundamental Rights Chapter which mostly contains political rights

The Indian courts have also accepted the principlest hat reference can be made to the Preamble for ascertaining and elucidating certain controversial points as for example in the case of A K Gopalan Vs State of Madras it was maintained by the court 'There can be no doubt that the people of India have in exercise of their sovereign will as expressed in preamble adopted democratic ideals and reserved to themselves certain fundamental rights and I agree that in construing these provisions the high purpose and spirit of the Preamble as well as the Constitutional significance should be born in mind'[158] Now in this regard a very important point arises The courts have referred to the Preamble in relation to the importance of the Fundamental Rights but it has not referred with same emphasis to the Preamble in relation to the economic and social rights and to Directive Principles although in the same preamble the guarantees of economic justice and economic rights have also been given[159] This clearly shows that there has been less awareness of the true constitutional significance of the Directive Principles and our aim is to create a positive constitutional awareness regarding them The aim of this book is not only to create positive awareness of the importance of Directive Principles merely on political or moral grounds, for carrying out the historical evolution of our political thought and our political struggle to fruition but on constitutional and legal grounds as well On the authority of the views of many important writers such as Maxwell, Justice story etc we have maintained previously that reference should be made to the Preamble and to the intentions of the authors for solving any controversy On such reference we find that the Objectives Revolution and 'Preamble give guarantees of economic justice and the claim of economic justice is more than that of political rights This will be clear from the sequence of the words used in the text of the Preamble first word regarding rights is JUSTICE, with the word 'Justice also in the order the first word is 'social' then, next 'economic' and in the last 'political After 'JUSTICE come other political rights-

LIBERTY then EQUALITY etc. The ideal of economic and social justice is to be realized through Directive Principles and hence Directive Principles have more Constitutional and legal importance and this should not and can not be ignored. This conclusion is borne out by our previous arguments that what has been the intention of the mover of the Objectives Resolution in the Constituent Assembly and the same has been accepted through the Preamble in the name of Sovereign will of the people of India and thus Directive Principles have their established legal and constitutional importance. For the interpretation of the various Articles of the Constitution a reference has to be made to them and a balanced decision should be given keeping in view the over all situation, both of Fundamental rights and Directive Principles. It is constitutionally and legally improper to give Directive Principles an inferior status. If such views were upheld and accepted by the courts there would have been no need to amend the constitution as it has been done as a consequence of the decisions of the courts upholding the superiority of the Fundamental Rights over Directive Principles [160]. Through these various amendments of the constitution such a situation has been created so as to establish the supremacy of the Directive Principles to bring about the conditions of Social and Economic justice and many Articles of Fundamental Rights Chapter have been diluted in force and many clauses has been deleted altogether as for example the amended Article 31 (a) and 31 (b) have reduced the interfering power of the articles of Fundamental Right Chapter in the realization of the ideals of the provisions of Directive Principles. The Article 31 (B) which reads ' Without prejudice to the generality of the provisions contained in Article 31 (A) none of the Acts and Regulations specified in the Ninth Schedule nor any provision thereof shall be deemed to be void or ever to have become void on the grounds that such Act Regulation or Provision is inconsistent with or takes away or abridges any of the rights conferred by any provisions of this part and notwithstanding any judgment decree or order of any court or tribunal to the contrary each of the said Acts and Regulation shall subject to the power of any competent legislature to repeal or amend it continue in force [161]. Through this amendment the obstructing article of Fundamental

Rights Chapter which are opposed to the realization of economic justice have been put in an inferior place and finally the supremacy of the legislature has been also established regarding the economic and social programmes which the state has to follow Thus the ultimate say in this matter has been left to the legislatures and not to the courts[162] In fact when the Constitution became operative it was expected that the courts will take into consideration the due practical, and constitutional importance of Directive Principles and will give a direction to the Constitution consistent with the aims and aspirations for which the struggle for freedom was fought, that is for the removal of the poverty of the masses and the upliftment of the backward classes through the process of equalization of wealth and the avoidance of the concentration of economic power in few hands but the courts, contrary to the expectations of the authors of the Constitution gave more importance to the Fundamental Rights so much so that almost all the schemes of social engineering as for example abolition of Zamindari and removal of other intermediaries from the and, nationalization of some services etc were challenged in the courts effectively The authors of the Constitution had given a clear picture about the use and the instrumentality of the Constitution but inspite of this the scheme of values was effectively challenged and attempts were made to change and modify it Speaking on the issue of relative position of economic and social inequality vis a vis political equality, and why there should be more emphasis on social and economic equality Dr Ambedkar said in the Constituent Assembly on 25th Nov 1949 "We must not be content with mere political democracy We must begin by acknowledging the fact that there is a complete absence of two things in the Indian Society One of them is equality on the social plane We have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane we have a society in which there are some who have immense wealth as against many who live in object poverty On the 26th January 1950 we are going to enter into the life of contradiction In politics we will have equality and in social and economic life we will have inequality How long shall we continue to deny equality in our social and economic

life?[163] This question is addressed to those who put obstacles in the way, of realization of economic and social justice by blocking the execution of Directive Principles Dr Ambedkar had given a warning regarding the perils which will result if such inequalities are not removed 'We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has labouriously built up '[164] Similar concern and anxiety was expressed by Pt Nehru and he also gave a similar warning when courts gave decisions upholding the supremacy of Fundamental Rights when state took steps for agrarian reforms and special encouragement for the backward and the poorer sections of the community But I would like to put it to them and to others that their security ultimately lies in a stable economic system and not in the law courts or in anything else If there is no peace between them and the vast agrarian population they have no security That system cannot continue it does not matter what your Fundamental Rights might say what your Constitution might say or what your courts might say If you refuse to see beyond these you will arrive at a revolutionary situation which will ignore all these things We have to consider the reality and readjust ourselves put an end to the big Zamindari system reform our land system make it progressive and modernize it
But the fact remains that when you change a social system or an agrarian system the burden must fall on somebody [165]

Thus assessing and reviewing all the previous arguments given above it is re affirmed that if the economic and social justice for which constitutional guarantee has been given by the solemn unanimous acceptance of the Objectives Resolution by the Constituent Assembly and which has been further confirmed by the language of the Preamble of the Constitution on behalf of the united people of India the Directive Principles have to be given a superior status over conflicting Fundamental Rights otherwise these pledges and guarantees given for economic and social justice will not be realized and to do any thing to block the realization of those ideals will be unconstitutional will be against the constitution will be against the constitutional objectives of national policies The importance of the provisions of Directive Principles

7 Political theory of Liberalism its Evolution and effect on Indian Constitution

All Constitutions are the products of their own political philosophy and history Constitutions are the means to establish those institutions through which cherished ideals are to be realised and their value and worth should be measured by the extent to which they prove successful means for the attainment of desired aims Frequently enough our Constitution is understood and interpreted on the basis of the principles of the Constitution of U S A On the argument that it is a written one and has a chapter on Fundamental Rights in the form of Bill of Rights but the political philosophy and the forces of history behind the two is ignored The Constitution of U S A is a product of its own background and of 18th 19th century political philosophy ours is a modern one, and is based on a political philosophy very much nearing to socialism in aspiration One is a constitution more or less of static nature in the sense that greater emphasis has been laid on statusquo ours is a dynamic one with more emphasis on the establishment of a new society and social order free from exploitation where there will be economic equality where economic concentration will not be permitted and where major services and industries will be socially owned One is the product of the economic theory of laissezfaire and free enterprise the other of controlled and regulated economy[166] It is very clear that the fundamentals of these two constitutions are very different

The earlier phase of our constitutional and freedom struggle was very much influenced by the principle and ideals of early Liberalism and upto a particular stage there exists a parallelism between the history of Political Thought of European countries particularly England and that of ours primarily because India's fate to a great extent was allied to that of England The philosophy of Liberalism was spearheaded in Europe and England by a new class—the prosperous middle class which had acquired influential position in the society due to the benefits of industrial revolution and large scale commerce The political ideals of this class included such liberties freedom of thought of expression and

of association, the security of property and freedom of trade and vocation These were to be realized by the adoption of constitutions, and the institutions of the governments workin, under them con trolled in ultimate analysis by representative legislatures responsi ble to an electorate which should include as far as possible the entire adult popu ation

These ideals and rights had been defended in the name of inalienable 'Natural Rights and took their inspirations from the political philosophy of French Revolution and John Locke, and were included in the American Declaration of Independence which later on produced American Constitution at Philadelphia Convention Although the political philosophy of Liberalism as such continued on the whole for a considerable long period pre-dominantly as the philosophy of middle class, but later on due to the increased enfranchisement and the appearance of conscious working class this had to be modified because the interests of other classes also had to be considered and respected Gradually Liberalism from the philosophy of a particular class became the philosophy of the whole community Our early freedom fighters were also influenced by this philosophy of early Liberalism and its ideals through western education The early liberals in Eng land, on humanitarian grounds were opposed to exploitation and miseries of the masses. Their political outlook was also tampered by religious considerations and same is true of many of our early freedom fighters In India as in England there was a bourgeoise class which spearheaded these concepts of liberties and freedoms and under their influence the Congress was found by an English man Mr Hume and its activities were then concerned with mid dle and upper middle classes and English educated sections of the population only Our Liberals also had no real contact with the masses and they agitated and criticized British Indian Govern-ment for their own advantages This class and their organization has been described by Late Pt Nehru as Bourgeoise class and bourgeoise organization The English educated class grew slowly in the cities and at the same time a new middle class arose consis ting of professional people e g Lawyers and Doctors and there were merchants the go between of British trade and industry

" They found the British Obstructing them in every path

in the freedom of producing and elling of goods and the freedom of contract between industrialists and labours unhampered by any governmental interference This condition of Economic System was for them based on the simple principles of Natural Justice and Liberty and any interferene in this was considered by them interference in their fundamental rights of liberty free trade vocation and property etc They viewed their rights and their sanctity in this light In other words they believed in the creed that perfectly free exchange will produce automatically a system of natural justice That is they believed that complete freedom of exchange either of goods or services produced automatically a natural harmony of interest which needs only to be let alone in order to produce as much economic advantage to every individual as circumstances permit (Defenders of Fundamental Rights of the Indian Constitution also hold imilar views and consider any interference by the state by way of amendments of these rights interference in their natural rights) But they ignored and could not foresee and comprehend the important principle that economic interests of the classes are opposed to each other The interest of the industrialists and employers is to give minimum possible amount in the form of wages which is quite oppo ed to the interest of labour as a class However so long labour lacked class consciousness free enterprise economic system carried on but rapid industrialization and increase in democracy via increas ed enfranchisement created a situation where the interest of labour and poor class s could not be ignored The clash of class intere t produ ed tension and conflict and to provide for this later liberals accepted the ideal and principle of legislative coercion to produce a social harmony [168] the greatest good of the greatest number

Thus due to the circumstances th e onomic ideals and political ideals of early liberal philo ophy came in conflict and it came to be realized that economics and politics are not mutually independent From the point of view of utilitarianism for the greatest good of the g eatest number social harmony should be produced by legislative regulation and coercion and from the point of view of laissezfaire economists harmony of economic interest and justice is produced by the al ence of legislative interference

labour"[110] Mill's contribution was very significant in the sense that any economic system should not be based merely on their rigid laws but should be conditioned by the considerations of humanism that is they should take into account the happiness and miseries of human beings in general This very ideal was held by Late Pt Jawaharlal Nehru and throughout his political carrer he emphasised this aspect of humanism or humanitarian conside ration, for him socialism had importance in this context alone because he believed that socialism could produce the best possi ble conditions for human welfare [111] These ideals of best possi ble conditions for human welfare mostly have been included in the Directive Principles of state policy of Indian Constitution For him the value of human personality did not lay in the realms of metaphysical thoughts but as something to be realised in the actual condition of free society A good society according to him was one which opened ways and created opportunities for satis fying life Pt Nehru and later liberals maintained that liberty is not only an individual good but also a social good that is indivi dual right and public utility are closely connected These views are also supported by Justice Gajendragadkar Modern libera lism draws its inspiration from a progressive and comprehensive ethical philosophy Its main postulate is that individual life should show preference for social obligation [112] Lastly Mill's views about the function of a liberal state in a free society are expressed in the following words in which he states that the function of a liberal state is not negative but positive It cannot make its citi zens free merely by refraining from legislation legislation should be used for creating equalizing opportunities [113] All this in sub stance meant that the liberalism as a political philosophy that was drifting towards a philosophy that the conditions of the greatest good of greatest number should be realised through legislative coercion and the rights of individuals have to be regulated in the interest of community in general This aspect of human persona lity and liberalism and the positive contribution of the State for the human welfare was further elaborated by T H Green He believed and maintained that any system which perpetuated human miseries and deprived them of the substancial share of the produce of the country was to be condemned seriously, In Green ,

writings and beliefs one finds a strong sense of moral injustice of a society that withheld from large portion of its members the goods partly material but chiefly spiritual which the culture of that society created Full participation in the affairs of the society is [illegible] development of human personality and to create the possibility of such participation was the end of the liberal society [174] In India many political leaders were influenced by these ideals of progressive liberalism and they emphasised their importance in their own ways For Gandhiji the uplift of backward and scheduled castes and removal of untouchability and other social and economic barriers etc depended on such humanitarian and liberal ideals because these barriers prevented a large number of people from sharing and participating in the affairs of the society and the produce of the country — Sarvodaya' means general upliftment For Gandhiji political freedom and social upliftment was one of the prior steps for spiritual development, his ideals of village panchayats and panchayatiraj and prohibition etc, have been included in the directive principles [175]

Dr O P Goyal has drawn a parallelism between the views of Gandhiji and T H Green "The closest resemblance in western political thought to the concept of Sarvodaya is the 'common good ideal of Professor T H Green' [176] For Pt Nehru also socialism meant service to the common man and concern for common good He was (Nehruji) moved by the miseries of the Kisans and labourers and felt pangs of their miseries He writes "In 1920 I was ignorant of labour conditions in factories or fields and my public outlook was entirely bourgeoise I knew of course that there was terrible poverty and misery and I felt that the first aim, of politically free India must be to tackle this problem of poverty looking at them and their misery and overflowing gratitude I was filled with shame and sorrow—shame at my own easy going and comfortable life and our petty politics of the city which ignored this vast multitude of semi naked sons and daughters of India, sorrow at the degradation and overwhelming poverty of India A new picture of India seemed to rise before me naked, starving, crushed, and utterly miserable [177] To end such situations in society Green postulated the idea of positive freedom, that is the state through legislation must create actual situations **for the**

benefit of the individuals. Freedom must therefore means not mearly a legal but an actual possibility, a genuinely created power on the part of the individual to share in the goods which a society produces.[178] Merely formal equality unrelated to the actual facts of the circumstances has no meaning (the directive principles are means to create these actual conditions of equality and their importance should be evaluated in this sense), what can be the meaning of a right of free contract, freedom of trade and legal equality when actual conditions do not permit any such right where only alternative is loss of the employment. Green believed that the standard for legislation should be the idea of general good; it cannot be individual liberty alone. Self is a social self. The concepts of liberty and freedom should have both individual and social aspects.[179] Gandhiji and Pt. Nehru also emphasised this aspect although in their own different ways. The main function of the Government is not to abstain or being neutral but to do some positive thing to advance general good. The central ideas of this philosophy is that self is a social self. Gandhiji's ideal of self is a social self is reflected in his advice to the rich people that they should think themselves as Trustees of the people. According to T.H. Green, liberal Government is impossible except in a society where legislation and public policy are continuously responsive to public opinion and to the welfare of masses.[180] He justified coercion because it neutralised other forms of coercions which are less tolerable. Similarly Pt. Nehru pleaded and emphasised in the parliament for the suitable amendments of the constitution to put restrictions on some fundamental rights in the same belief because absence of such coercions on fundamental rights created intolerable coercions for the down trodden millions. Green's restatement of liberalism finished the rigid line between economics and politics by which the older liberals had excluded the state from interfering with the operation of free market.[181] Pt. Nehru's views as expressed below:

"You cannot have a purely political ideal for politics is after all only a small part of life ... Your idea must be a complete whole and must comprise life as it is today, economic, social as well as political."[182] Also seek to break the rigid lines between economics and politics. They are mutually interdependent. The

major purpose for this revision of theory of liberalism for green, was to force the state to adopt a legislative programme for positive good from which it had previously abstained The State must come forward for making public education compulsory and should finance it also to make regulation for sanitary and public health standard of nutrition housing for decent living conditions and control over labour contracts [183] Our Directive Principles have incorporated all these ideals It should thus be noted that their exists a parallelism of views between our leaders and modern English liberals Green s ideas came very near to the liberal form of socialism involving no class antagonism and was very much similar to idea of Fabian type of socialism ' No sharp difference of principle separated Green s liberalism from the socialism of the group of young man who organized the Fabian Society in 1884 Both green and the Fabians reflected, probably independently an important change in the climate of British political opinion, namely a loss of confidence in the alleged social efficiency of private enterprise and an increased willingness to use the state s legislative and administrative power to correct its abuses as an extension of liberalism [184] *(It has* been pointed out previously that Pt Nehru s interest in socialism tarted from Fabian type of socialism when he was student at Cambridge University I would say that it was really at Cambridge that broadly speaking certain socialistic ideas—partly Fabian Sacialism partly some slightly more aggressive socialistic ideas—developed [185] *Thus it* should be noted that Fabian Type of socialism is an extention of the views of *T H* Green that revised liberalism is an effort to discipline Individualism of old liberalism Now from the tage of Green s revised liberalism we come to the stage of *cocialism It* has been emphasised previously that our constitution has been influenced to a very great extent by the aspirations of socialistic principles

In the Fabian essays Sydney Webb asserted that the economic ide of the democratic idea is in fact socialism itself' and Sidney Oliver said that socialism is a *merely* individualism rationalized is only the expression of the eternal passion of life seeking its satisfaction through the striving of each individual for the freest and fulle t activity Socialism *is not*

suppression but the realization of personality and individuality Indeed it would not be difficult to represent Fabian socialism as an effort to implement Green s positive freedom on the basis of a much wider knowledge of economics and of industrial and political administration than Green possessed And while the Fabians propo ed to go much farther than Green in the direction of nationa izing basic ndut stries and control'ing production and distribution they based their plans, as Green did on the observed bad effects of leaving the economy uncont rolled Sidney Webb in ' Labour and the New Social Order 1918 chalked out a programme of national minima for British Labour Party and this programme included a minimum standard of leisure, health education and subsistence and any policy contrary to this programme to be considered as anti national All these ideals of public policy have been included in the provisions of Directive Principles of our constitution, and not to implement the provisions of Directive Principles should be considered contrary to our public policy these directive principles are thus the objectives of Indian National Policy

The crux of the arguments is that the earlier phase of our struggle for freedom was influenced by early liberalism and the concept of certain inalienable civil rights such as right of freedom of expression liberty life property were emphasized and they believed (early freedom fighters) in the laissezfaire economic system An evolution in political ideals took place and under the influence of Gandhiji and Pt Nehru freedom struggle more and more came to be hinged on the issue of alleviation of the *sufferings of human* beings and gradual realization that capita listic economic system produces human miseries and this system should be ended and should be replaced by a system not based on acquisitive tendency but on co operation The state should through progressive legislation create those actual conditions and circumstances where there may be the greatest good of the *greatest number that is the state is morally bound to control* the economic system in the interest of general good It should by possitive efforts strive to create Humane conditions of work for the security and stability of employment for the creation of better conditions of health, nourishment sanitation

housing etc , and should make positive efforts for the compulsory education at state expense All these ideals of revised liberalism have been included in our Directive Principles and State is under constitutional obligation under Article 37 and it shall be the duty of the State to apply these principles in making laws[186]" to trive to secure these conditions and to apply these ideals and directives for its legislative and executive programme Thus the ideals of revised and evolved Liberalism have been incorporated in the Directive Principles of our Constitution and they represent the evolved phase of that theory Those who oppose these directive principles stuck on the level of old and discarded theory of liberalism Early Liberalism laid more emphasis on civil rights e g equality before law security of property freedom of profession and trade and freedom of contract etc Mostly these political rights have been included in the chapter of Fundamental Rights The revised and advanced theory of 'liberalism puts more emphasis on social and economic rights Mostly such social and economic rights have been included in the Directive Principles of our Constitution Thus the provisions of Directive Principles represent the ideals of advanced liberal political philosophy and are therefor of superior value Earlier liberalism also laid more emphasis on individualism but revised theory of liberalism permits interference in the liberty of individual in the interest of general community that is it emphasizes that self is a social self This theory therefore permits legislative interference in the economic system by the State for the general good Various amendments of the Constitution which have been done to abolish Zamindari free enterprise capitalistic system concentration of wealth etc have been done according to the principles of revised liberalism Those who have opposed these amendments on the plea that they interfere with their civil and political rights as incorporated in Fundamental Rights Chapter have remained stuck to the old notions and have not kept pace with the evolution of the philosophy of liberalism that is why they failed to appreciate the superior importance and significance of the Directive Principles

So far we have discussed about the economic policy and Laissezfaire theory etc in relation to the old and revised libera ism Now we come to the abolition of Zamindari and big land

holdings and their abolition on the basis of modern theory of state Zamindari system was a product of middle age feudalistic system of political organization where sovereignty for practical and historical reasons was divided because in addition to National laws private laws also existed which feudal lords and Zamindars could apply over their tenants This was either due to the absence of an effective central control or due to the connivance of kings Feudalism is typically a system in which public functions are treated as private services to be bought or sold as if they were property In a modern state such system which allows private law and public function in private hand is unthinkable because according to modern concept of sovereignty the power of state is not divisible and no intermediary on land and law can be tolerated between the state and the tenants and therefore on this ground of indivisible sovereignty Zamindari system has no place Apart from this it is a system which produces exploitation of labour and Kisans and causes them great hardship by way of heavy demands by Zamindars from their tenants and their illegal ejectments and other harrasments To allow such a system which produces so much miseries is contrary to the principles of humanism and modern theory of the state Thus both from political as well as economic reasons due to the modern concept of sovereignty and concern of the state for public welfare and social security Zamindari system can have no place in modern society The various amendments of the constitution to facilitate the abolition of Zamindari and otherbig estates and obstacles created in this programme by the interpretations of the courts in the defence of Fundamental Rights should be viewed in this light and then issues of discussion can be better appreciated to uphold the superiority of Directive Principle over conflicting fundamental rights The conflict between Fundamental Rights and Directive Principles is the coflict of the old and modern theory of liberalism

clearly asserted that any future constitution of free India will provide for the abolition of Zamindari and special welfare schemes for the backward sections of the community that is our aim will be to form an egalitarian society It is very natural that if we want to establish such a society the privileged classes which have been existing since long will have to be levelled down and in return down troddens will have be uplifted In other words, in independent India there shall be reorganization on social economic and political plane and this was the aim of establishing our constitution

It has been shown in chapter "On the importance of Preamble As An Aid In The Understanding of the Constitution that the Preamble is the yardstick of our Constitution It has also been shown that 'Objectives Resolution moved by Pt Nehru has been mainly reproduced in the Preamble The Preamble emphasises the establishment of a society where there shall be social, economic and political justice Some of the aspirations of the Preamble mainly those of political nature such as equality before law, freedom of speech expression etc and other liberties have been included in the Chapter of Fundamental Rights but still a larger number of aspirations have been put in the directive principles and they are mainly of social and economic nature It has also been adequately stressed that we cannot rest content with political equality alone but we will have to make attempts to establish social and economic equality as well which can mainly be achieved through the effective implementation of the provisions the of Directive Principles[187]

The crux of the problem of this book is, if there is a conflict between a fundamental rights and directive principles which has greater importance? This book is mainly concerned with the conflict between these two viz Fundamental Rights and Directive Principles, regarding issues of economic and social nature only This situation of the conflict has a risen because courts have upheld the supremacy of the conflicting fundamental rights against relevant Directive Principles merely on the ground that the former are justiciable and the latter are not We have shown in chapter second that this basis alone should not be viewed as all important

so as to exclude all other considerations There are other points as well for consideration If we want to establish a progressive socialistic society, if we want to realize so many ideals which have been mentioned in the directive principles we will have to give them their rightful importance For the sake of the rights of few, the entire historical development cannot be stultified or reversed The history of various relevant amendments of the constitution show that mostly such amendments have been made to translate the ideals of Directive Principles [188] If this is not done then how can we progress towards an egalitarian and socialistic society ? If we defend the statusquo of inequality in the name of some fundamental rights how can achieve equality Which is our goal ? To defend the statusquo of inequality in the name of some fundamental rights is itself rank injustice and great manoeuvring for perpetuating inequality In fact before providing equality, the already existing inequalities have to be eliminated first To avoid such complications in the interest of establishing a classless society and to make the nature of Indian Constitution clear without any ambiguity Prof K T Shah had suggested in the constituent assembly that in the first article of our constitution 'Socialistic State' words should be included [189] He had a prophetic apprehension that, perhaps in future courts may not give due respect to the directive principles through which socialistic society may be established but Dr Ambedkar gave a solemn assurance on the floor of the constituent Assembly that the inclusion of the words socialistic state is redundant due to the presence of directive principles in the draft constitution because all the needed socialism has been put in them [190] (Directive Principles) Now whenever the state tried to abolish Zamindari, to make so far miserably neglected farmers the owners of the land the courts came in the way and hence first and fourth amendments were made in the constitution to make the way clear for the economic progress Thus gradually a slow but progressive revolution was taking place through these amendments and sufficient explanations were given for the need of these amendments The apparent contradiction between the fundamental rights of property and needs, rights of Kisans were harmonized through these amendments by the Indian Parliament The substance of the whole process can be summed up in the words of

late Pt Nehru "It is upto this parliament to remove that contra diction and make the fundamental rights subserve the directive principles [191] Fundamental Rights have often been used to preserve wrecking so ial i i q ialities, this, cannot be allowed to happen in India The social id ais of the 20th Century must not be lost amid 18th and 19th Century P incip es of Fundamental Rights [192] These views of Pt Nehru were latter on supported by David H Bayley, through following lines In any case of subs tantial conflict between the Sovereign will of Parliament and the opinions of Judiciary even in interpreting the constitution of India the will of Parliament must prevail This does not mean that India does not or cannot have an independent Judiciary which can do much to enforce the rights set forth in Part III of the Constitution It only means that po se sed of a certain determination the central legislature will and indeed ought to over ride the opinion of the courts This principle is not exceptional in itself the English have been operating under it for generations without losing any appreciable measure of their political free dom [193] Thus through progressive amendments through the translation of Directive Principles into action [194] we have been progressing towards an egalitarian society This fact has been acknowledged and appreciated even by foreign writers and it has also been accepted that it is and has been a ociali tic revolution Thus for example Taya Zinkin writes Ever since 1946 India has been passing through a revolution, a revolution doubly unique It is the world s only socialist revolution and it is the only revolution to be conducted democratically with all the forms of law by the time it is over India will have been transformed from a society thoroughly hiearchic into one almost as firmly egalitarian as Sweden [195] Appreciating it further, Taya Zinkin writes ' more over if it succeeds the Indian revolution which can perhaps be best described as Nehruist will provide the rest of the under deve *loped world with a pattern of development which will make com* munism look both old fashioned and barbarian by comparison

It is in fact a revolution by consent This Indian Revolution is deliberately and professedly socialist [196]

Similarly the great Indian patriot and writer shri Jaya

Prakash Narayan also accepts in his paper ' Organic Democracy "It is a matter of satisfaction that India is committed to a democratic socialist pattern of society "[197] Thus the slow and steady socialistic revolution was going on and Zamindari was abolished inspite of obstacles created by the decisions of the courts, nation lization of many services and industries was done, public sector was being created and tax structure was made to avoid as far as possible, concentration of wealth, 'In short the belt had been tightened around privilege s waist,' [198] Later on the courts also agreed that the state has a right to amend the constitution [199] but the majority judgement of the Supreme Court of India on the constitutional validity of the 17th amendment in the case of Golak Nath and Others Vs The State of Punjab [200] created a serious set back to it and had sought to turn the arms of the clock in the reverse direction It will be in the fitness of the affairs to touch in brief this decision of the Supreme Court on the constitutionality of the 17th Amendment Act and the power of amendments under Article 368 of our Constitution Out of the eleven judges of the Supreme Court six have held that, constitution under Artic n not be amended so as to abridge or infringe fundamental rights according to the article 13(2) It is a matter of common knowledge that Ist 4th and 17th amendments were made to execute, the provisions of the directive principles in contradiction to property rights previously defended by the courts In the case of Shankari Prasad and Sajjan Singh s the Supreme Court had held that the state has right to amend the constitution provided a particular procedure was adopted There is no limit on this power of amendment The present judgement was based on a very slender majority the majority of one Judge The judges of the Supreme Court were divided on this issue in two groups The one group led by ex Chief Justice Subba Rao and including justice Shah Justice Sikri Justice Shelat and Justice Vaidyalingam Justice Hidaytullaha maintain that Article 13 is most important and constitution can not be amended under article 368 to abridge fundamental rights In other words article 368 i to be treated as subservient to Article 13(2) while other group including Chief Justice Wanchoo Justice Bhargava Justice Mitter Justice, Bachawat etc maintained that article 368 gives un

lmited power to the state and thus article cannot be abridged in force by Article 13 In fact according to them Article 13(2) is to remain subservient to the amending artilce 368 In the case of Champakam Dorairajan Vs The State of Madras [3] the Supreme Court held as we have already discussed that the chapter of fundamental rights is sacrosanct and not liable to be abridged by any executive and legislative act and directive principles should remain subservient to fundamental rights This was the first stage of the opinion of the Supreme Court of India regarding relative value of directive principles vis a vis fundamental rights (article 46 in relation to article 15 and article 29(2)) through this decision court held the view that in the defence of the right of equality and non discrimination special encouragement and concessions to backward and scheduled castes regarding admission in educational institutions

ting articles of fundamental rights chapter, came to exist and many judges began to accept the view that the fundamental rights are amendable and that cognisance of directive principles should be taken into consideration when constitution is interpreted, as is evidenced by the following lines of Justice Mahajan and Justice S R Das 'Now it is obvious that the concentration of big blocks of land in the hands of a few individuals is contrary to the principles on which the Constitution of India is based The purpose contemplated by the Act, therefore, is to do away with the concentration of big blocks of land and means of production in the hands of a few individuals and to distribute the ownership and control of the material resources which come in the hands of the State so as to subserve the common good as best as possible' [203] The above quoted lines of Justice Mahajan are in relation of the case of Kameswar Singh vs State of Bihar in which the court used the directive Principles for its guidance in determining a crucial question on which the validity of the Bihar Act hinged The question was whether there was any public pupose to justify the legislation which acquired compulsorily vast lands of private owners Here the judge was guided absolutely by the Directive Principles Similarly Justice S R Das substaintially reproduced the same language in the same case after quoting articles 38 and 39 of the chapter on Directive Principles and said 'In the light of this new outlook what I ask is the purpose of the State in adopting measures for the acquisition of Zamindaries and the interests of intermediates Surely, it is to subserve the common good by bringing the land which feeds and sustains the community and also produces wealth by its forest mineral and other resources under State ownership or control This State ownership or control over land is a ncecessary preliminary step towards the implementation of Directive Principles of State Policy and it cannot but be a public purpose '[204] This is the second stage of the opinion of some courts and some judges regarding the relative value of directive principles Due to the progressive amendments we were marching towards the welfare state according to our previously expressed pledges [205] and this forward march through various amendments was favourably commented upon by Chief Justice Sastri in the case of Shankari Prasad vs Union of India

where the validity of the constitution (First Amendment Act) itself was challenged The Judge said ' What led to that enactment is a matter of common knowledge The Political party now in power commanding as it does a majority of votes in the servel State Legislature as well as in Parliament carried out certain measures of agrarian reform in Bihar Uttar Pradesh and Madhya pradesh by enacting legislation which may compendiously be referred to as Zamindary Abolition Acts Certain Zamindars feeling themselves aggrieved attacked the validity of those Acts in courts of law on the ground that they contravened the fundamental rights conferred on them by part III of the Constitution The High Court at Patna held that the Act passed in Bihar was unconstitutional while the High Courts at Allahabad and Nagpur upheld the validity of the corresponding legislation in Utter Pradesh and Madhya Pradesh respectively Appeals from those decisions are pending in the court Petitions filed in this court by some other Zamindars seeking the determination of the same question are also pending At this stage the Union Government with a view to put an end to all the litigation and to remedy what they considered to be certain defects to light in the working of the Consititution brought forward a Bill to amend the Constitution, which after undergoing amendments in particulars was passed by the requisite majority as the Constitution (First Amendment) Act, 1951 [206]

' The validity of the Constitution First Amendment Act itself was challeged in a petition under Article 32 in Shankari prasad Vs Union of India [207] But the Supreme Court upheld the validity of this Act holding inter alia that subject to the special provisions in Art 368 any provision of our Constitution can be amended by Parliament in the ordinary legislative process [208] Thes view represent the third stage some courts and some judges regarding the point that the constitution can be amended to abridge fundamental rights The decision of the Supreme Court in relation to the constitutional validity of the Seventeenth Amendment Act seeks to give a turn to the constitution in the reverse direction in the sense that in future so long this decision stands parliament can not amend the constition under Article 368 to abridge the scope of fundamental rights

This decision has created great political and constitutional stir in the Country and constitutional experts and judges are almost equally divided on the merits of the issue of this decision Five minority judges, formerly Advocate General of Madras Shri Kumar Mangalam and very eminent jurist and writer on the problems of Indian Constitution Prof D N Banerjee are very critical of this judgement [209] This decision has by implications far reaching political economic and social consequences because in future the programme for socio-economical progress may be hampered The controversy regarding this decision hinges on the scope of the word 'Law' and article 368 of the Indian Constitution This decision is also mainly related to the value of Directive Principles in relation to Cundamental Rights Upto the time of this decision as we have seen and noticed above that Supreme Court although upholding the Supremacy of Justiciable Fundamental Rights never doubted the authority of Parliament to make amendments under the authority of article 368 But now due to this decision a new situation has arisen It has been already pointed out that the judges of the Supreme Court were divided on this issue in two groups According to the majority group led by ex chief justice Shri Subba Rao article 13 of the constitution can over ride the provisions of article 368, in other words article 368 is to be treated as subservient to article 13(2), while other group including Ex chief Justice Wanchoo Justice Bhargava Justice Mitter, Justice Bachawat maintained that article 368 gives unlimited power to the state and this article can not be abridged by article 13 The first group maintained that the amendment procedure as enunciated under article 368 leads to the enactment of a 'law and therefore if it is in contravention of article 13 (2) it has no validity The second group of the Hon ble Judges holds the view that the procedure of article 368 leads to a 'constitutional law and not to an ordinary law and hence it can not be bound by the language of article 13(2) which deals with ordinary law and not with constitutional law Hon ble Justice Subba Rao and his supporting colleagues in short meant to say that the Fundamental Rights are beyond the reach of Parliament and under no circumstances no law and no amendment can be made by the parliament to abridge the scope of fundamental Rights This decision there

fore amounts to declare that the previous decisions of the Supreme Court are negatived and also that in future no directive principles will be permitted to over ride fundamental rights The basis of this single majority decision is that, amendment act is like an ordinary act or law and should be treated as such With due respect and deference to the Hon ble Judges of the majority it is to be pointed out that on close scrutiny this basis seems to be un sound and this has been acknowledged as such by Justice Wanchoo and his supporting colleagues of the Supreme Court My arguments are that part XX of the Constitution with the title Amendment of the constitution has been specifically provided for the amendment of the constitution and any Act which is produced as a consequence of the procedure of this part necessarily leads to the formation of a constitutional law and not to ordinary law because for the formation of ordinary law there is a different place in the constitution, articles 107, 108, 111, further if the language of part XX of the Constitution is read carefully it can be noticed that no where it has been mentioned that amendment can not be made to curtail fundamental rights If this were the position there was nothing to bar the framers of the constitution to write here in the explicit language that the amendments can not be made to curtail fundamental rights as has been clearly mentioned in the amending article (V) of the constitution of U S A where it has been expressly written provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article and that no State without its consent shall be deprived of its equal suffrage in the Senate [210] In the constitution of U S A thus a clear limit for the amendment of the constitution has been prescribed In the amending part of the Indian Constitution there is no such limit regarding fundamental rights if the intention of the makers of the constitution was this they would have easily introduced such prohibition on the amendment of the constitution Secondly clause (2) of article 4 which deals with the formation of new states says No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368 [211] This clearly proves that for the amendment of this constitution only article 368 is valid that is a

legitimate amendment of the constitution can be done only under article 368 These views are supported by Prof D N Banerjee in his article,215 "Supreme Court and Fundamental Rights"

POWER TO AMEND CONSTITUTION —

' It may also be noted in this connection that the Heading of Part XX of the Constitution and the marginal note thereto are respectively as follows Amendment of the Constitution and Procedure for amendment of the Constitution Certainly the authors of the Constitution knew what they were doing They used the expression Amendment of the Constitution and not of this or that Part of the Constitution They envisaged in Part XX of the Constitution the whole of the Constitution and not any particular part or Parts thereof Therefore part III of the Constitution which deals with our fundamental rights automatically falls within the scope of the amending provision i e article 368 Under it therefore, any part of our Constitution may be amended in any way the amending authority or authorities as the case may be, may think fit This is the law of our Constitution Any other view is not aw

Further a distinct procedure other than that which is used for ordinary law has been provided in this part for the amendment; that is ordinarily the law is made by the simple majority in both the Houses of Parliament or by a simple majority of the Joint Session of both the Houses of the Parliament but for the constitutional amendment a Bill has to be passed by a special majority that is by the majority of the total membership of the House and by a majority of not less than two third of the members of that House present and voting Next, an ordinary Bill when presented to the President can be sent back for reconsideration (Article 111)' but there is no provision for reconsideration of the constitutional Bill on the recommendation of the President, that is President can not treat constitutional Amendment Bill in the same way as he can do an ordinary Bill under Article 111 Thus we see that a constitution amendment 'Law can not be treated as ordinary law as has been suggested by former chief Justice Subba Rao "(The Chief Justice then considered whether the amendment of the Constitution under article 368 is 'Law' within the

13 (2) and said it does not exclude constitutional law) [213] Further 'The Chief Justice then r j cted the argu nent that the power to amend is a sovereign po ver .. there was nothing in the nature of the amending power which enables Parliament to over ride all the express or implied limitation imposed on that power

He therefore held that the seventeenth Amendment in as much as it takes away or abridges the fundamental rights is void under Article 13(2) of the Constitution [214] He (Chief Justice Subba Rao) concluded 'the fundamental rights are given a trans *cendental place under our constitution and are kept beyond the* reach of Parliament [215] Justice Hidaytullaha also maintained that constitutional law is not different from other ordinary law That is it is within the scope of Article 13(2) "Mr Justice Hiday atullah on the whole agreed with the Chief Justice The judge said there was no difference between the ordinary legislative and the am ending processes in so far as article 13(2) is concerned both being laws in their true character came within the prohibition of article 13(2) against the state and that the directive principles cannot be invoked to destroy fundamental rights It does not mean he said that fundamental rights are not subject to change or modification The constitution permits a curtailment of the exercise of most of the fundamental rights by stating the limits of that curtailment

but does not permit the state itself to take away or abridge the right beyond the limits said by the constitution [216] He fur ther said Parliament must amend article 368 to convoke another constituent assembly, pass a law under item 97 of the first list to call a constituent assembly and then that assembly may be able to abridge or take away the fundamental rights if desired It cannot be done otherwise [217] On the whole Justice Hidayatullaha con cluded (i) That the fundamental rights are beyond the amenda tory process if the amendment seeks to abridge or takes away any of the fundamental rights (ii) That Shankari Prasad s case (and Sujjan Singh s case which followed it conceded the power of amendment over part IIIrd of the Constitution on an erroneous view of articles 13 (2) and 368 (iii)[2 8] That this court having now laid down that fundamental rights cannot be abridged or taken away by the exercise of amendatory process of article 368 (iv) That for abridging or taking away fundamental rights a cons

tituent body will have to be convoked It is clear from the above conclusions of Chief Justice Subba Rao and Justice Hidayatullaha that ordinary law and constitutional law are similar so far the prohibition of article 13 (2) is concerned Both these Hon ble Judges missed the difference between ordinary law and constitutional law while we have tried to prove that constitutional law due to its different procedure of enactment and the need of a special majority and different consequences in relation to presidential consent, cannot be treated as ordinary law and hence it can not come within the prohibition of Article 13 (2) The position taken by Justice Wanchoo seems to be more sound He maintained that power contained in Article 368 was not ordinary legislative power but constituent power for the specific purpose of the amendment of the constitution This he said cannot be tested under Article 13 (2) or under any other provision of the constitution The 17th Amendment is, the Hon ble Judge said, merely an exercise of the power of amendment and cannot be struck down on the ground that it goes beyond the power conferred, on Parliament to amend the constitution by article 368 He held that there was no implied limitations on the power of Parliament under Article 368 and any provision of the constitution, be it in part III or any other part can be amended under article 368 Mr Justice Wanchoo further held that when article 13 (2) prohibits the State from making any law which takes away or abridges rights conferred on Parliament and legislature of States, it cannot have any reference to the constituent power for amendment of constitution in article 368 and further held that article 368 confers complete power to amend each and every provision of a constitution.' 219 Commenting on the point whether the decision in the case of Shankari Prasad in which Supreme Court had unanimously maintained that the state had a right to amend the constitution so as to curtail the scope of Fundamental Rights (Justice Hidayatullah has maintained that, that was based on an erroneous views as we have shown in the previous pages) Justice Wanchoo said 'that Shankari Prasad case was correctly decided and that the majority in Sajjan Singh s case was correct in following that decision Following that decision we hold that the 17th amendment is good ' He (Justice Wanchoo) repudiating the stand of the majority

emphasized that ' We would b^ very reluctant to over rule the unanimous decision in Shankari Prasad s case or any o her unanimous decision by the slender majority of one in a larger Bench constituted for the purpose We say this with great respect and would hold that apart from the principle of State decision we should not say that the unanimous judgment in Shankari Prasad case was wrongly decided by such a slender majority in this special bench ' Refeiing to article 368 Mr Justice Wanchoo said that when a separate part was provided headed Amendment of the Constitution the power to amend the constitution must also be contained in article 358 which is the only article in that part (He said) on a comparison of the scheme of the words in article 368 and the Scheme of the word in article 248 read with item 97 of list 1 there was no doubt in thei mi id that both the procedure and power to amend the constitution are to be found in article 368 and they are not to be found in article 248 read with item 97 of list 1 which provides for residuary legislative power of Parliament therefore Mr Justice Wanchoo said reading article 368 It is clear that the power to amend the constitution is to be found in article 368 itself and secondly the power to amend the constitution can never reside in articles 245 and 248 It was significant to note that the word law which has been used in so many articles has been avoided with great care in Article 368 power contained in article 368 was not ordinary legislative power but constituent power for the specific purpose of amendment of the constitution, and can not be tested under article 13 (2) or under any other provision of the constitution [2 0] (Mr Justice Bhargava and Mr Justice Mitter concurred with the views of Justice Wanchoo) Defending the power of amendment of the state Justice Wanchoo said that it is a safety valve which to a large extent provides for stable growth and makes violent revolutions more or less unnecessary [2 1] and warned that the more rigid a constitution the more likely it is that people will outgrow it and throw it overboard violently Similar views were held by Justice Rama Swami agreeing that 17th amendment is legally valid and it is clear he said that the first fourth and 17th amendment were to help the state legislatures to give effect to measures of agrarian reform in a broad and

comprehensive sense in the interest of a very large section of Indian Citizens whose social and economic welfare closely depends on the pursuit of progressive agrarian policy He also rejected the argument that the power of amendment is to be found in article 246 and 248 of the constitution read with Item 97 of List I The power of amendment can not fall within these articles because it is illogical and a contradiction in terms to say that the amending power can be exercised and at the same time it is subject to the provisions of the constitution Today at a time when absolutes are discredited it must not be too readily assumed that there are basic features of the constitution which shackle the amending power and which take precedence over the general welfare of the nation and the need for agrarian and social reforms [222] Mr Justice Bachawat by a separate judgement agreed with Mr Justice Wanchoo and said that article 368 was a provision meant for amendment of the constitution The Judge rejected the contention that a constitutional Amendment is a law and therefore the power of amendment given by article 368 is limited by article 13(2) In fact he said artiele 13(2) is ubject to the overriding power of Article 368 and is controlled by it Article 368 is not controlled by Article 13(2) and the prohibitory injunction of Article 13(2) is not directed against the amending power He said looked at from this broad angle Article 13(2) does not forbid the making of a constitutional amendment abridging or taking away any right conferred by Part III The power of amending the Constitution is not an ordinary law making power It is to be found in Article 368 and not in Article 245 246 and 248 Mr Justice Bachawat held that the Ist 4th and 17th amendments are constitutional and not void [223] The substance of the arguments of the majority in this case (on the constitutional validity of the 17th amendment) is (i) that fundamental rights are beyond the amending power of the Parliament as described in article 368 (ii) A law passed by the Parliament under the procedure of article 368 is an ordinary law and hence it comes within the prohibition of article 13(2) (iii) If Parliament has to amend the fundamental rights then it must convene a constituent assembly as per its residual power under Article 246 in conjuction with the contents enumerated in List I of the VII Schedule Entry 97 in list I

gives Parliament power to make a law in respect of any other *matter not enumerated in List II and List III This power is* termed the residuary power We have already discussed the views of many eminent judges of the minority group in this case that amending power of the constitution lies in the article 368 only because the title of this article is amendment of the constitution Secondly the language of clause (2) article 4 "No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368" Clearly shows that for the purposes of the amendment of this constitution power lies in article 368 only Thirdly even if it is accepted for the time being that the power of amendment of the constitution regarding fundamental rights is not in article 368 and is in articles 245 246 248 as has been suggested by the majority judgment it is most respectfully *submitted that the basis of this argument is fallacious because the* residuary power has been inserted in entry 97 of List by accident for originally the constitution makers intended to invest the state legislatures with the residuary power and not the Parliament It was only at latter stage in the discussions in the Constitution Assembly a decision was taken to vest the residuary power in the Centre Thus it is clear that originally makers of the constitution never intended to give residuary power to the Parliament or the Central legislature and it was only latter on that the suggestion was accepted that resudiary power may be vested in the Parliament Now the Judges of the majority group say that in the constitution the power of amendment is to be exercised in relation to the residuary power of the Parliament and they ignore that this vesting of residuary power in Parliament was merely an accident and it was really never contemplated that amending power will reside in other articles accept article 368 If according to the original plan the resudiary power was vested in the states then there would have been no question of the amending power being located within that resudiary power of the states for that would lead to the position that all the states are individually competent to amend the constitution [224] and this situation would have reduced amending process to chaos and the destruction of the constitution This shows that it is not a sound argument to say that the amending power

of the constitution does not lie in article 368 but in articles, 245 246, 248 and the residuary power of the parliament because this residuary power in Parliament was vested merely by a chance and not by any purposeful intentions of the constitution makers and hence the basis of this argument cannot be relied upon Next, the last sentence in the first paragraph of article 368 the Constitution shall stand amended in accordance with the terms of the Bill, also proves that the amendment in the constitution will be done according to the procedure of article 368 Further in all countries where there is the provision for a written constitution there is always a distinction between an ordinary law and a constitutional law, this is not the case in a country like England where there is no written constitution and all laws passed by the Parliament are similar without any distinction between an ordinary law and constitutional law In India there is a written constitution and hence any law which is concerned with the amendment of the constitution is a constitutional law and not an ordinary law and it cannot come within the prohibition of article 13 (2) which is concerned with the ordinary law Regarding the question how amendments in the constitution can be done to modify or change the fundamental rights, Justice Hidayatullah says "Parliament must amend Article 368 to convoke another Constituent Assembly, pass a law under Item 97 of the First List of Schedule 7 to call a Constituent Assembly and then that assembly may be able to abridge or take away the fundamental rights if desired '[225] Now if this argument is accepted then Parliament by a simple majority can pass a Bill under its ordinary legislative power and convert itself into a Constituent Assembly and then it can with simple majority destroy each and every fundamental right Commenting on this point it can be said that if the views of Justice Hiday atullaha are accepted then it will be much easier for a party in the Parliament with even simple majority to make in roads on fundamental rights much more easily than it can now do under the procedure of article 368 because under this procedure it has to seek the support of at least two third of the majority of the members present and voting and in some cases concurrence of half the legislatures of India is also needed The proposition of Hidayatullah J that Parliament by

exercise of its law making power can convene a new Constituent Assembly in effect makes the destruction of fundamental rights by Parliament a task more easy of achievement than if the procedure under Article 368 is to be followed For as pointed out earlier his new Constituent Assembly will be brought into existence by a simple majority of the existing Parliament, and the Constituent Assembly so given birth to may by this same simple majority do anything *it wishes to the constitution*[26] *Thus the views of the* majority judgment by implication can lead to a situation when it will be easy to destroy fundamental rights All these difficult and confused legal arguments however arise only because of the avoidance of the straight forward reply namely that article 368 is the complete answer to the question of where the amending power is and how it is to be exercised The minority judgement lays down with clarity that the amending power is to be located in article 368 It accepts the constitutional position that legislative power and constitution amending power are two powers of the totally different quality Regarding this controversy Prof D N Banerjee also writes and supports the minority judgment As a student of Indian Constitutional law I find it really difficult to agree with the recent (Feb 27 1967) Judgment of the Majority of the Judges of our Supreme Court in what has become a popularly known as the Golak Nath and others Vs The State of Punjab with all due deference to their Lordship s I am constrained to say that speaking juristically, the judgment does not appear to have been based upon a correct interpretation of the relevant provisions of our constitution [27] He further said "Article 13 of our constitution does not apply to or controls in any way article 368 thereof Nor was it intended to do so by the authors of the constitution [28] Commenting upon the nature of fundamental rights in relation to the amending power of the Parliament Prof D N Banerjee says ' I therefore very respectfully submit that our fundamental rights however important they may be are not immutable and that they have no transcendental position in our constitution [29] Thus it should be noted that the majority decision on the validity of the seventeenth constitutional amendment act has created a great legal controversy The problem with which we are most concerned is how to progress towards

the ideals of an egalitarian society in view of this decision because now according to this decision in future state cannot amend the constitution to make way for th directive principle Mr N C Chatterjee, Member of the Lok Sabha had suggested a presidential reference to the Supreme Court for an authoritative interpretation of article 368 of the Constitution The purpose of this reference according to Mr Chatterjee is to make the article available for amending the constitution The court should also be asked to suggest any changes in the article if necessary to place the sovereignty of the people beyond the pale of controversy The suggestion are contained in the letter Mr Chatterjee wrote to the Prime Minister Mr Chatterjee holds that the concept of a progressive welfare state sometimes demanded changes even of the fundamental rights "He has said, the country is entitled to know if ever amendments in the constitution become necessary to make our constitution conform to the needs of our fast changing society, why should a constitutional machinery as contemplated in article 368 be denied [230] Prof D N Banerjee suggests that authorities concerned must take steps 'for an early review of the majority Judgment in the Golak Nath case not with the help of article 143 (1) of the constitution but through a specific case brought before Supreme Court for adjudication A judgment should be fought by a judgment and not by any advisory opinion under article 143 (1) of the constitution [231] It is hoped that on such a refererence under the leadership of President Chief Justice Wanchoo, the minority view to which chief justice Wanchoo also agreed will prevail and way will be cleared for changing the conflicting fundamental rights to bring about a desired socio economic reorganisation as envisaged in the provisions of the directive principles

The Directive Principles of the Constitution elaborate, in a sense the ideals of the Preamble If the Preamble postulates the Sovereignty of the people the Directive Principles *provide them with* a yardstick to evaluate the moral character of the government under which they live They serve as a test which the electorate can apply to a government in power they supply criteria by which the success or failure of a political party could be judged [232]

It has been pointed out in the introductory chapter, that our

constitution has been influenced to a great deal by the Gandhian Philosophy and it is natural that his ideals should have been also incorporated in our constitution Many important features of Gandhian Philosophy have been included in the directive principles and many of these directive principles in turn have become the basis of extensive legislation for example article 40 which directs that the state shall organize village Panchayats and endow them with powers of self government has become the basis for *Panchayati Raj which has altered the very structure of district* administration of India Article 43 which deals with the promotion of cottage industries has given rise to a number of agencies now working in this direction such as All India Khadi and Village Industries Board All India Handicrafts Boards small scale Industries Board, National Small Industries Corporation etc Similarly article 47 which is concerned with the implementation of the programme for the improvement of the standard of living of the rural population has become the justification for the Community Development Programme which has far reaching consequences Social Economic and Political for the country The Directive Principles are thus very important for Gandhian ideals as well If we really want to understand our constitution rightly a balanced view about the existing actualities and future ideals has to be maintained This means we are passing through a transitional stage and we have to move gradually in the direction of a new system of organization of the Indian community really based on the ideals of economic and social justice where there is no exploitation of man by man The Direction of these movements is provided by the Directive Principles if we lay too much emphasis on the fundamental rights we shall cease to move and statu quo of present inequalities would continue The fundamental rights represent some thing static, there objective is to preserve certain rights which already exist and directive principles are progressive they take the community towards a new goal and if some thing new is to be achieved it is but natural that the existing relationships will have to be changed This is the dictate of logic and we cannot escape it During Parliamentary Debates at the time of he consideration of fourth constitution amendment Bill Dr N C Chaterjee had (in 1955) vehemently opposed that Bill and very

greatly emphasised that fourth amendment Bill was meant to tamper with the ' Sanc ity of Private Property and said in Lok sabha that ' Public good is nothing more essentially interested than in the protection of private property [233] Dr N C Chaterjee emphasised in Laksabha on 11th April 1955 'The Purpose of this Fundamental Rights Chapter was that no matter what majority you have, there are certain forbidden sectors on which you will never tresspass The purpose of fundamental Rights is that certain legal principles should be established beyond reach of Parliament and the executive [234] Thus Dr N C Chatterjee in 1955 opposed the amendment of the constitution to abridge the fundamental rights must remain beyond the reach of the Parlia ment But in the present circumstances Dr N C Chatterjee in view of the situation created by the decision of the majority judgment in the case of the constitutional validity of the 17th amendment says that a reference be made by the president to the Supreme Court that how if need be constitution may be amended to abridge fundament l rights According to Shri Chaterjee 'the concept of a progressive welfare state some times demanded chan ges even of the fundamental rights He has further said in the same context that if ever amendments in the constitution become necessary to make our constitution conform to the needs of our fast changing society why should a constitutional machinery as contemplated in article 368 be denied [235] Similarly Prof D N Banerjee in his book Our Fundamental Rights Their Nature and Extent (As Judicially Determined) written in 1960 had supported the views of Dr N C Chatterjee regarding the amendment of the constitution (Fourth Constitution Amendment Bill) and has written in that book in relation to the statement of Late Pt Nehru (then Prime Minister of India) that it is upto our Parliament to make the Fundamental Rights subserve the Directive Principles of the State Policy [236] that it would be much better and *more straightforward to delete the Chapter on* Fundamental Rights from the Constitution and thus to do away with a camouflage [237] However now according to him I therefore very respectfully submit that our fundamental right however important they may be are not immutable and they have no transcendental position in our constitution These reasons embolden me to say

that even if your Constitution Assembly had laid down as a matter of fact it had not done so any restriction on the sovereign authority of Our Parliament vested in it by Article 368 of our Constitution, that restriction would not have had any power to prevent our Parliament from making such changes in the Constitution as it might think fit If however, we think otherwise that will not be interpreting our Constitution but writing a new constitution altogether To declare therefore that our fundamental rights are of Immutable and 'transcendental character may be, it is very respectfully submitted good poetry which may appeal to aur emotions but not good law which may appeal to our intellect [238] Fundamental rights are not immutable in transcendental in character and now there is emphasis on the amendments of the fundamental rights I cannot do better than quoting at this stage the lines of our great national leader Pt Nehru In the process of protecting individual liberty if you also protect individual or group inequality then *you come into conflict with that directive principles* If therefore an appeal to individual liberty and freedom is construed as an appeal for the continuation of the existing inequality then you come up against difficulties You become static aud unprogressive and cannot change you cannot realize the ideal of an egalitarian society which I hope most of us want "[239] Commenting on the needs of amending the constitution and fundamental rights in relation to directive principles Justice Gajendragadkar says My point in mentioning some of these amendments is to illustrate my thesis that in seeking to achieve socio-economic justice democracy and the rule of law can not treat any proposition as absolute and any provision as infallible and beyond the pale of modification If experience shows that some change has to be made democracy and the rule of law do not hesitate to make the change because it is the very essence of sociological jurisprudence that like life law itself must benefit by experience [240] Further in the same context Justice Gajendragadkar said 'Democracy can no longer be a passive witness to the socio economic struggle and tensions It has to give up its policy of non alignment in such disputes because if the state is non aligned the result of the struggle is a foregone conclusion The fight between the rich and the

poor, the educated and un educated, the employed and the unemployed, the healthy and the sick is an entirely unequal fight, all advantages being on one side and all disadvantages being on the other If the state were to leave the decision of this fight to the unfettered rule of the free market in the belief that the survival of the fittest is the natural law then, of course the democratic way of life will be powerless [241] He has further said & has supported the dynamic part of the constitution in the following words 'We reach a stage in the progress of the democratic way of life where law ceases to be passive just as democracy ceases to be passive and the purpose of law like that of democracy becomes dynamic [242] We have already noticed that directive principles represent the dynamic part of our constitution hence for towards the goal of a really welfare state directive principles have to be given great importance The above quoted lines of late Pt Nehru & the opinion of Ex Chief Justice of India regarding the importance of dynamic elements and principles of our constitution are key to the understanding of the supremacy of the directive principles Thus our constitution is socialistic in aspiration directive principles are the means through which socialistic organisation will be established there is an organic connection between the Preamble of our constitution and directive principles The Preamble substantially incorporates the sentiments of the Objectives Revolution moved by Late Pt Nehru before the constituent assembly and the speeches of Pt Nehru regarding this resolution speak clearly of socialism There is an under current of socialism flowing through the various parts of our constitution and this ideal of socialism revolves round humanistic ideals of the emancipation of the common man Let there be more emphasis on equality rather than on social and economic in equality Once we understand this the Directive Principles will appear more and more important and necessary It is hoped that this work (Thesis) will create an atmosphere of better appreciation of the value of the Directive Principles in relation to conflicting fundamental rights and in future Supreme Court under the leadership of ex Chief Justice Wanchoo who was favourably disposed to our view will revise its opinion and will open way for modifying fundamental rights in case of need for the implementation of Directive principles

Thus an attempt has been made in this Thesis (book) to weigh in a balance the relative importance of Directive Principles and Fundamental Rights and it is concluded that (1) Constitutions should be interpreted in the light of [illegible] and historical background preceding their actual formation. (2) The Indian Constitution is historically based on the ideals and aspirations of socialistic form of society. (3) Its aim is the equitable distribution of wealth and opportunities. (4) The Constitution further aims to establish a new organisation of society, based on socialistic principles to be brought about by the effective implementation of Directive Principles. (5) The opposing Fundamental Rights which come in the way of Directive Principles should either be suitably modified, diluted or deleted from the Constitution through amendments. (6) The Parliament should have a right to amend the Constitution even for making changes in the Fundamental Rights because concept of Fundamental Rights cannot remain static. It has to modify itself in the wider interests of backward and poorer sections of the community. (7) By keeping an eye on the broader aims of the Constitution Courts should give more liberal & harmonious interpretation of the Constitution and help and guide the legislatures for the establishment of a society where economic and social justice may become a reality through the effective implementation of Directive Principles so the distance between those who have and those who have not may be reduced.

The 42nd amendment act is a culmination of the arguments so far pursued in this book. Shri N. K. Sanghi M.P. very eloquently said in the Lokasabha, that a bill for 42nd amendment act should have been passed by the Parliament a decade back. Coincidently this work was ready for publication, nearly decade back. Through progressive constitutional amendments we hope to establish in India, a really socialistic and egalitarian society. The Constitution of India is to be understood and interpreted in the light of our cherished ideals incorporated in the preamble, Directive Principles and a balance has to be maintained between Fundamental Rights and Directive Principles.

Jai Hind

Appendix 'A'

Part III

Fundamental Rights

Definition

12 In this Part, unless the context otherwise requires "the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India

13 (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency, be void

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of contravention, be void

(3) In this article, unless the context otherwise requirs,-

(*a*) 'law" includes and Ordinance, order, bye-law, rule regulation notification, custom or usage having in the territory of India the force of law

(*b*) laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368

RIGHT TO EQUALITY

Equality before law

14 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

15 (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex place of birth or any of them

(2) No citizen shall, on grounds only of religion, race caste, sex, place of birth or any of them, be subject to any disability liability, restriction or condition with regard to—

- (*a*) access to shops, public restaurants, hotels and places of public entertainment or
- (*b*) the use of wells tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

16 (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

(2) No citizen shall, on grounds only of religion, race, caste sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in *respect of any employment or office under the State*

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a classes of employment or appointment to an office under the Government of or any local or other authority within a State or Union territory any requirement as to resi

dence within that State or Union territory prior to such employment or appointment

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

17 "Untouchability" is abolished and its practice in any form is forbidden The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law

18 (1) No title, not being a military or academic distinction, shall be conferred by the State

(2) No citizen of India shall accept any title from any foreign State

(3) No person who is not a citizen of India shall while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State

(4) No person holding any office of profit or trust under the State shall without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State

RIGHT TO FREEDOM

19 (1) All citizens shall have the right—

(*a*) to freedom of speech and expression,

(*b*) to assemble peaceably and without arms,

(*c*) to form associations or unions,

(*d*) to move freely throughout the territory of India,

(e) to reside and settle in any part of the territory of India

(f) to acquire, hold and dispose of property, and

(g) to practice any profession, or to carry on any occupation, trade or business

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right con ferred by the said sub clause in the interest of the sovereignty and integrity of India the security of the State, friendly relations with foreign States public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the from making any law imposing in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so for as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

(5) Nothing in sub clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing of sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevent the State from making any law imposing in the interests of the general public, reason

able restrictions on the exercise of the right conferred by the said sub clause, and in particular nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to—

(i) the professional or technical qualifications, necessary for practising any profession or carrying on any occupation trade or business, or

(ii) the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

20 (1) No person shall be convicted of any offence except for violation of a law in force at time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) No person accused of any offence shall be compelled *to* be a *witness against himself*

21 No person shall be deprived of his life or personal liberty except according to procedure established by law

22 (1) No person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply –

(a) to any person who for the time being is an enemy alien or

(b) to any person who is arrested or detained under any law providing for preventive detention

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that three is in its opinion sufficient cause for such detention

Provided that the nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7) or

(b) *such person is detained in accordance with the* provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7)

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose

(7) Parliament may by law prescribe –

(a) the circumstances under which, and the class of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accor

dance with the provisions of sub clause (a) of clause (4)

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4)

RIGHT AGAINST EXPLOITATION

23 (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them

24 (1) No child below the age of fourteen years shall be employed to work in any factory or engaged in any other hazardous employment

RIGHT TO FREEDOM OF RELIGION

25(1) Subject to public order, morality and health and to the other provisions of this Part all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the stete from making any law—

(a) regulating or restricting any economic, financial political or other secular activity which may be associated with religious practice

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion

Explanation II In sub clause (*b*) of clause (2) the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religions institutions shall be construed accordingly

26 Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(*a*) to establish and maintain institutions for religious and charitable purposes

(*b*) to manage its own affairs in matters of religion

(*c*) to own and acquire movable and immovable property and

(*d*) to administer such property in accordance with law

27 No person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination

28 (1) No religious instructions shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution

(3) No person atttending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious worship that may be conducted in such institution or in any premises attached thereto unless such person is a minor his guardian has given his consent thereto

CULTURAL AND EDUCATIONAL RIGHTS

29 (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of the State funds on grounds only of religion, race, caste, language or any of them

30 (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

(2) The State shall not, in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

RIGHT TO PROPERTY

31 (1) No person shall be deprived of his property save by authority of law

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law, and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash

Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause [1](1) of article 30, the State shall ensure that the amount fixed by or determined under such law for the acquision of such property is such as would not restrict or abrogate the right guaranteed under that clause

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property

(2B) Nothing in sub clause (f) of clause (1) of article 19 shall affect any such law as is referred to in clause (2)

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2)

(5) Nothing in clause (2) shall affect—

(*a*) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(*b*) the provisions of any law which the State may hereafter make—

(*i*) for the purpose of imposing or levying any tax or penalty, or

(*ii*) for the promotion of public health or the prevention of danger to life or property, or

(*iii*) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification, and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the

ground that it contravened the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935

[1][SAVING OF CERTAIN LAWS]

31A (1) Notwithstanding anything contained in article 13, no law providing for—

(*a*) the acquisition by the State of any estate or of any rights therein, or the extinguishment or modification of any such rights, or

(*b*) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(*d*) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors directors or managers of corporations, or of any voting rights of share holders thereof or

(*e*) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 **Provided** that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law having been reserved for

1 Inserted by the Constitution (Forty second Amendment) Act, 1976

the consideration of the President, has received his assent

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof

(2) In this article,—

(*a*) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include —

(i) any *jagir inam or muafi* or other similar grant and in the States of Tamil Nadu and Kerala, any *janmam* right ,

(ii) any land held under ryotwari settlement

(iii) any land held or let for purposes of agriculture or for purposes, ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans ,

(*b*) the expression "rights", in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor under proprietor, tenure holder *raiyat, under raiyat* or other intermediary and any rights or privileges in respect of land revenue

31B Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any

of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force

31C Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing [1][*all or any of the principles laid down in Part IV*] shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by article 14 article 19 or article 31 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy

Provided that where such law is made by the Legislature of a State the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent

31D (1) Notwithstanding anything contained in article 13 no law providing for—

(a) the prevention or prohibition of anti-national activities or

(b) the prevention of formation of or the prohibition of anti national associations

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31

(2) Notwithstanding anything in this Constitution Parliament shall have and the Legislature of a State shall not have power to make laws with respect to any of the matters referred to in sub clause (a) or sub-clause (b) of clause (1)

(3) Any law with respect to any matter referred to in sub-clause

1 Substituted by the Constitution (Forty second Amendment) Act, 1976

(a) or sub clause (b) of clause (1) which is in force immediately before the commencement of section 5 of the Constitution (Forty second Amendment) Act 1976, shall continue in force until altered or repealed or amended by Parliament

(4) In this article —

(a) 'association' means an association of persons

(b) anti national activity in relation to an individual or association means any action taken by such individual or association—

(i) which is intended or which supports any claim to bring about on any ground whatsoever the cession of a part of the territory of India or the secession of a part of the territory of India or which incites any individual or association to bring about such cession or secession

(ii) which disclaims questions threatens disrupts or is intended to threaten or disrupt the sovereignty and integrity of India or the security of the State or the unity of the nation

(iii) which is intended or which is part of a scheme which is intended to overthrow by force the Government as by law established

(iv) which is intended or which is part of a scheme which is intended to create internal disturbance or the disruption of public services

(v) which is intended or which is part of a scheme which is intended to threaten or disrupt harmony between different religious racial language or regional groups or castes or communities

(c) anti national association means an association—

(i) *which has for its object any anti-national activity*

(ii) which encourages or aids persons to undertake or engage in any anti national activity

(iii) the members whereof undertake or engage in any anti national activity

RIGHT TO CONSTITUTIONAL REMEDIES

32 (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue direc-

ons or orders or writs, including writs in the nature of *ibeas corpus mandamus* prohibition, *quo warranto* and *rtiorari*, whichever may be appropriate, for the enfor-ment of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the preme Court by clauses (1) and (2), Parliament may y law empower any other court to exercise within the ical limits of its jurisdiction all or any of the powers ercisable by the Supreme Court under clause (2)

( ) The right guaranteed by this article shall not be sus nded except as otherwise provided for by this Consti t tion

3 A *Notwithstanding anything in article 32, the Supreme Cou t shall not consider the constitutional validity of a y Stat law in any proceedings under that article unless th constitut onal validity of any Central law is also in issue in such proceedings*][1]

33 Parliament may by law determine to what extent any of the rights conferred by this Part shall, in th ir application to the members of the Armed Forces or the Forces charged with the maintenance of public or er, be restricted or abrogated so as to ensure the pr per discharge of their duties and the maintenance of dis ipline among them

34 Notwithstanding anything in the foregoing provisions of this Part Parliament may by law indem nif any person in the service of the Union or of a State or ny other person in respect of any act done by him in onnection with the maintenance or restoration of ord r in any area within the territory of India where ma tial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act dor under martial law in such area

3 Notwithstanding anything in this Constitution —
(*a*) Parliament shall have and the Legislature of a State shall not have, power to make laws-

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1 nserted by the Constitution (Forty second Amendment) Act 976

(*i*) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament, and

(*ii*) for prescribing punishment for those acts which are declared to be offences under this Part

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub clause (ii)

(*b*) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament

Explanation In this article, the expression law in force" has the same meaning as in article 372

Part IV

DIRECTIVE PRINCIPLES OF STATE POLICY

Definition

36 In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III

37 The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws

38 The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political, shall inform all the institutions of the national life

39 The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood ,

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment ,

(d) that there is equal pay for equal work for both men and women ,

(e) that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength ,

[1][(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of free dom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment]

39A The State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for secur ing justice are not denied to any citizen by rea on of economic or other disabilities]

40 The State shall take steps to organise village pan chayats and endow them with such powers and authority as may be necessary to enable them to func tion as units of self-government

41 The State shall within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to pub lic assistance in cases of unemployment, old age, sick ness and disablement, and in other cases of undeserved want

42 The State shall make provision for securing just and humane conditions of work and for maternity relief

43 The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise work, a living wage, conditions of work, ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular the State shall endeavour to promote cottage industries on an individual or co operative basis in rural areas

43A The State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishment or other organisations engaged

1 Substituted by the Constitution (Forty second Amendment) Act 1976

2 Inserted Ibid

in any industry][1]

44 The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India

45 The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children unit they complete the age of fourteen years

46 The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

47 The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health

48 The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserveing and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle

48A The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country][2]

49 It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be

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1 Inserted by the Constitution (Forty second Amendment) Act, 1976

2 Inserted by the Constitution (Forty second Amendment) Act, 1976

50 The State shall take steps to separate the judiciary from the executive in the public services of the State

51 The State shall endeavour to—

(a) promote international peace and security,

(b) maintain just and honourable relations between nations

(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another and

(d) encourage settlement of international disputes by arbitration

[1][*Part IV-A*]

FUNDAMENTAL DUTIES

51A It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom ,

(c) to uphold and protect the sovereignty, unity and integrity of India

(d) to defend the country and render national service when called upon to do so

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women

(f) to value and preserve the rich heritage of our composite culture

(g) to protect and improve the natural environment including forests lakes rivers and wild life and to have compassion for living creatures ;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform

(i) to safeguard public property and to abjure violence

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement

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1 Inserted by the Constitution (Forty second Amendment) Act 1976

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3 Article 17 of the Indian Constitution—Chapter of Fundamental Rights p 1

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5 Article 42 of the Indian Constitution—Chapter of Directive Principles p 1

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10 (a) Refer to Fundamental Rights and Economic Policy adopted at 1931 Karachi Congress For detail please refer to the pages 82 86 p 4

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15 The decision of the Supreme Court of India on Feb, 27, 1967, on the Constitutional validity of the Seventeenth

Amendment Act is also related to the question of the relative value of the Fundamental Rights and Directive Principles and the position of the Parliament in relation to these two chapters of Fundamental Rights and Directive Principles (Golak Nath Case) p 6

16 The Judgements of the Supreme Court—Chiranjitlal Chaudhari Vs The Union of India and others (dated 4th Dec 1950), The State of Bombay and V F N Balsard (dated 25th May 1951) p 6

17 Basu—Commentary on the Constitution of India, Vol I Page 71 p 7

18 Ibid p 7

19 Supreme Court of India Case No 270 271, 1951—The Supreme Court Report 1951 p 7

20 Lok Sabha debates—11th April 1955 p 8

21 Lok Sabha Debates 14th March 1955 p 8

22 Also refer to the majority view of the Supreme Court on the Constitutional Validity of the Seventeenth Amendment Act as reported in the Hindustan Times, India March 1st, 1967 p 8

23 Speeches of Shri G B Pant Rajya Sabha debates 17th March 1955 and 19th and 20th April 1955
Shri Pataskar Law Minister 14th 15th March Parliamentary debates, 1955 (for details please refer to the chapter V B Page 84) p 8

24 Please refer in this regard the views of Ex Advocate General of Madras Shri S Mohan Kumaramangalam in 'Link 7th May 1967 Page 21 22. Parliament and the People in which he holds the view that people s will as represented by the Parliament must prevail and he cites the support of eminent authorities on the interpretation of the constitution such as Justice Frankfurter, Lord Halifax Justice Storey and supports the view of Chief Justice Wanchoo on the validity of the 17th Constitution Amendment Act p 9

25 Ex Chief Justice Gajendragadkar was also of this opinion—refer to Chapter V, Liberty and Social Justice Harmonious adjustment Page 88 89 Law Liberty and Social Justice Asia Publishing House 1965 p 9

"My point in mentioning some of these amendments into democracy and the rule of law cannot treat any proposition as absolute and any provision as infallible and beyond the pale of modification If experience shows that some change has to be made democracy and the rule of law do not hesitate to make the change, because it is the very essence of sociological jurisprudence that like life, law itself must benefit by experience p 9

26 A K Gopalan Vs The State of Madras Supreme Court, Reports 1950 p 10

27 Constitutional History of India Vidhya Dhar Mahajan, Page 271 p 10

28 Constituent Assembly Debates 13th December, 1948 pp 999—1001 Fundamental Rights Their Nature and Extent D N Banerjee p 206 p 12

29 Law Liberty and Social Justice—Justice Gajendragadkar, Page, 63 64 p 14

30 See The Supreme Court Reports, 1951, Vol II, Part V May, 1951, pp 525 33 p 15

31 Re quoted from our Fundamental Rights-Their Nature and Extent (As Judicially Determined) D N Banerjee pp 81-82 p 16

32 Article 29(2) of the Indian Constitution p 17

33 See The Supreme Court Reports 1951, Vol II Part V, 1951 pp 525-33 regarding Supreme Court case No 270 271 p 17

34 Ibid p 18

35 Much controversial judgement of the Supreme Court of India on the Constitutional validity of the 17th Amendment Act is also regarding relation of Fundamental Rights and Directive Principles on one hand and Fundamental Rights and the scope of the Article 368 p 18

36 Socialistic aspiration of the Indian Constitution have been discussed in detail in Chapters to follow p 19

37 Quoted from Commentary on the Constitution of India Basu Third Edition Vol I, Page 25 Introduction p 20

38 Ibid p 20

39 The majority decision of the Supreme Court on the Constitutional validity of the 17th Amendment Act (27th Feb, 1967) also over emphasises the supremacy of the Fun

damental Rights and goes to the extent that Parliament has no right to amend the Constitution to infringe Fundamental Rights p 20

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41 Kameshwar Vs Province of Bihar A I R 1951 p 21

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45 Constituent Assembly Debates 29th November, 1948 p 23

46 Constituent Assembly Debates 29th November 1948 page 661 p 23

47 Jawaharlal Nehru s speeches 1949 53 Chapter, Equality and Backward classes Pages 517 519 p 25

48 Constituent Assembly Debates, 15th Nov., 1948, Vol VII No 6, page 400 p 27

49 Constituent Assembly Debates 15th Nov 1948 page 403 p 28

50 Constituent Assembly Debates 15th November, 1948 Vol VII, No 6, page 421 p 29

51 The decision of the Supreme Court of India on the Constitutional Validity of the 17th Constitutional Amendment Act (Golak Nath Case) also gives greater importance to the Fundamental Rights in relation to Directive Principles and this proves that the apprehension of Prof K T Shah have proved sound p 29

52 Lok Sabha Debates March 14, 1955 p 29

53 Ibid p 29

54 The 44th Amendment has also to be viewed in this context p 30

55 Law, Liberty and Social Justice P B Gajendragadkar Ex Chief Justice of India pages 78 80 p 30

56 Ibid page 89 Chapter, Liberty and Social Justice Harmonious Adjustment p 31

57 Reference is here to the Objectives Resolution moved in the Constituent Assembly by Pt Jawahar Lal Nehru on 13 Dec, 1946 p 33

58 His views about the nature of the Indian Constitution as expressed, through the speeches in the Parliament at the time of the consideration of the Ist and IVth Constitution Amendment Bills created a better appreciation of the Constitution and saved it from taking the turn which the decisions of the courts gave, on important issues of Equality acquisition of property, its compensation and the conflict of the Fundamental Rights and Directive Principles etc p 33

59 The importance of the Objectives Resolution was acknowledged even in the Constituent Assembly by its members e g Maulana Hasrat Mohani expresssd in the Constituent Assembly on 15th Nov, 1948 (Constituent Assembly Debates) page 418 Vol VII No 6 Our Prime Minister has repeatedly stated that the Constitution should be in conformity with the Objectives Resolution not only recently but from the very beginning The Objectives Resolution is history and we stand by all the principles laid down in it p 33

60 Nehru A Political Biography–Michael Brecher, page 138 p 33

61 The Federalist or The New Constitution (Edited by Max Beloff Oxford) No X page 43 This reference can be seen also on page 162 of–A Grammer of Politics H Laski p 35

62 A Grammer of Politics – H Laski page 176 p 35

63 Jawaharlal Nehru s speeches 1949 1953, Chapter Equality and the Backward classes page 523 24 p 35

64 Ibid page 531 p 35

65 Refer to the Text on the Resolution on Fundamental Rights and Economic Policy – sub-title Labour and Taxation and Expenditure Economic and Social Programme at Karachi Session of the Indian National Congress Aug 1931 The Text of the resolution has been included on (pages 82 86) of this Book for reference The Text has been taken from Nehru – The First Sixty Years Dorothy Norman, Vol I page 249 250 p 36

damental rights guaranteed " P 74

120 For details please refer to the Introductory Chapter pages 17 19 P 75

121 Supreme Court Reports 1950 Vo I Part II & III April & May, 1950 pages 1'1 113 P 76

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127 Details of these cases have already been given in the previ ous pages of this chapter P 79

128 The latest controversial decision of the Supreme Court of India by a narrow majority of one about the constitutional validity of the Sevnteenth Constitution Amendment Act is also related to the fundamental right of property P 80

129 The Lok Sabha Debates of 14th March 1955 P 81

130 Jawaharlal Nehru s Speeches 1949 1953 page 484 This sp eech was delivered while moving an amendment to Article 24 of the Draft Constitution Constituent Assembly, New Delhi September 10, 1949 P 81

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136 Ibid P 86

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138 See the Parliamentary Debates Rajya Sabha 20th April 1955 P 88

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142 Jawaharlal Nehru s Speeches 1949 1953 p 484 p 91
143 Law Liberty and Social Justice by P B Gajendragadkar Chief Justice of India page 88 89 Chapter V Liberty and Social Justice Harmonious Adjustment p 92
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148 Nehru Jawaharlal Independence and After 1946-1949 pp 344 53 p 96
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153 Jawaharlal Nehru s Speeches 1949 1953 page 532 Chapter Equality and the Backward Classes The speech was delivered on May 29 1951 in the Parliement p 99
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